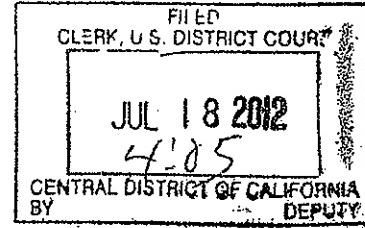


1 Michael S. Kun (State Bar No. 208684)
2 William O. Stein (State Bar No. 150124)
3 Lisa M. Watanabe (State Bar No. 258182)
4 EPSTEIN BECKER & GREEN, P.C.
5 1925 Century Park East, Suite 500
6 Los Angeles, California 90067-2506
Telephone: 310.556.8861
Facsimile: 310.553.2165
mkun@ebglaw.com
wstein@ebglaw.com
Iwatanabe@ebglaw.com



7 Attorneys for Defendant
AVALONBAY COMMUNITIES, INC.

9
10 UNITED STATES DISTRICT COURT
11
12 CENTRAL DISTRICT OF CALIFORNIA

13 DANA CONCEPCION,
14 Plaintiff,
15 vs.
16 AVALONBAY COMMUNITIES,
17 INC., a corporation; RANDALL
CARAWAY, an individual; and DOES
1-25, inclusive,
18 Defendants.

CASE NO. CV 12-6203 MWF
(Ex)

NOTICE OF REMOVAL

[Pursuant to 28 U.S.C. §§ 1332 and 1441(a)]

20 TO PLAINTIFF DANA CONCEPCION AND HER ATTORNEYS OF
21 RECORD:

22 PLEASE TAKE NOTICE that Defendant AvalonBay Communities, Inc.
23 ("Defendant" or "AvalonBay") hereby files this Notice of Removal pursuant to 28
24 U.S.C. § 1332 and § 1441(a), based on diversity jurisdiction, in order to effect the
25 removal of the above-captioned action from the Superior Court of the State of
26 California for the County of Los Angeles, and state that removal is proper for the
27 following reasons:
28

///

1 **I. PLEADINGS, PROCESS AND ORDERS**

2 1. On or about June 13, 2012, Plaintiff Dana Concepcion ("Plaintiff")
3 commenced the above-entitled action in the Superior Court for the County of Los
4 Angeles by filing a Complaint therein entitled Dana Concepcion v. AvalonBay
5 Communities, Inc., a corporation; Randall Caraway, an individual; and Does 1
6 through 25, inclusive, Case No. EC058728. The Complaint purports to state
7 causes of action for retaliation, failure to prevent retaliation, discrimination on the
8 bases of race, national origin and ancestry and disability discrimination.

9 2. On or around June 20, 2012, Defendant was served with a copy of the
10 Summons, Complaint and various documents. True and correct copies of the
11 Summons and Complaint, Civil Case Cover Sheet, Civil Case Cover Sheet
12 Addendum and Statement of Location, Notice of Case Assignment, ADR
13 information, Notice of Order to Show Cause and Notice of Case Management
14 Conference that were served on Defendant are attached to this Notice of Removal
15 as Exhibit "A" and incorporated herein by reference.

16 3. On July 17, 2012, Defendant filed its Answer to the Complaint. A
17 true and correct copy of the Answer is attached hereto as Exhibit "B" and
18 incorporated herein by reference.

19 4. The above documents constitute all pleadings, process and orders
20 served on and by Defendant in the state action and are attached in accordance with
21 28 U.S.C. § 1446(a).

22 5. On information and belief, Defendant Randall Caraway ("Caraway")
23 has not been served with the Summons, Complaint or any other documents related
24 to this matter.

25 **II. BASIS FOR REMOVAL**

26 6. This action is a civil action of which this Court has original
27 jurisdiction under 28 U.S.C. § 1332, and is one which may be removed to this
28 Court by Defendant pursuant to the provisions of 28 U.S.C. § 1441 in that it is a

1 civil action between citizens of different states and the matter in controversy
 2 exceeds the sum of \$75,000, exclusive of interest and costs.

3 **A. Citizenship**

4 7. Plaintiff has alleged that she “is, [a]t all times herein mentioned in
 5 [the] Complaint was, a resident of Los Angeles County, California.” (Complaint,
 6 ¶ 1.) Plaintiff, therefore, is, and at all times since the commencement of this action
 7 has been, a citizen of the State of California.

8 8. AvalonBay, is now, and was at all relevant times, incorporated under
 9 the laws of the State of Maryland. AvalonBay’s headquarters are located at 671 N.
 10 Glebe Road in Arlington, Virginia 22203. AvalonBay’s officers work from its
 11 headquarters in Virginia and direct, control, and coordinate AvalonBay’s activities
 12 from the headquarters. Therefore, AvalonBay is a citizen of the States of
 13 Maryland and Virginia pursuant to the Supreme Court’s holding in Hertz, 130 S.Ct.
 14 at 1192.

15 9. Defendant is informed and believes that Caraway has not been served
 16 with the Complaint, the Summons, or any other documents in this action. Those
 17 named as defendants but not served in the state court action need not join the
 18 notice of removal. See, e.g., Salveson v. Western States Bankcard Ass’n, 731 F.2d
 19 1423, 1429 (9th Cir. 1984) (“[A] party not served need not be joined; the
 20 defendants summonsed can remove by themselves.”), superseded by statute on
 21 unrelated grounds, as noted in Ethridge v. Harbor House Rest., 861 F.2d 1389,
 22 1392 n. 3 (9th Cir. 1988).

23 **B. Fraudulent Joinder**

24 10. Caraway must also be disregarded for purposes of diversity because
 25 he is a sham defendant, i.e., he cannot be found liable as a matter of law. See, e.g.,
 26 Morris v. Princess Cruises, Inc., 236 F.3d 1061, 1067 (9th Cir. 2001) (holding that
 27 removal based on diversity of citizenship was proper and that district court
 28 “correctly ignored” joinder of a resident defendant after it was shown that plaintiff

1 “could not possibly prevail” on her claim against the resident defendant); Dodson
 2 v. Spillada Maritime Corp., 951 F.2d 40, 42 (5th Cir. 1992) (finding fraudulent
 3 joinder of non-diverse defendants where there was “no possibility that [plaintiff]
 4 would be able to establish a cause of action against them”); Ritchey v. Upjohn
 5 Drug Co., 139 F.3d 1313, 1318 (9th Cir. 1998) (“[F]raudulently joined defendants
 6 will not defeat removal on diversity grounds.”), cert. denied, 525 U.S. 963 (1998);
 7 see also McCabe v. General Foods Corp., 811 F.2d 1336, 1339 (9th Cir. 1987) (“If
 8 the plaintiff fails to state a cause of action against a resident defendant, and the
 9 failure is obvious according to the settled rules of the state, the joinder of the
 10 resident defendant is fraudulent.”); Lewis v. Time, Inc., 83 F.R.D. 455, 460 (E.D.
 11 Cal. 1979), aff'd, 710 F.2d 549 (9th Cir. 1983) (a sham defendant is to be ignored
 12 for purposes of removal).

13 11. Joinder of a defendant is fraudulent if the defendant cannot be liable
 14 to the plaintiff on any theory alleged in the complaint. Ritchey, 139 F.3d at 1318
 15 (quoting McCabe, 811 F.2d at 1339 (“If the plaintiff fails to state a cause of action
 16 against a resident defendant, and the failure is obvious according to the settled
 17 rules of the state, the joinder of the resident defendant is fraudulent.”)).

18 12. When determining whether a defendant is fraudulently joined, “[t]he
 19 court may pierce the pleadings, consider the entire record, and determine the basis
 20 of joinder by any means available.” Lewis, 83 F.R.D. at 455 (“[I]t is well settled
 21 that upon allegations of fraudulent joinder... federal courts may look beyond the
 22 pleadings to determine if the joinder... is a sham or fraudulent device to prevent
 23 removal.”); McCabe, 811 F.2d at 1339 (a defendant “is entitled to present the facts
 24 showing the joinder to be fraudulent”).

25 13. Caraway was fraudulently joined in Plaintiff's Complaint because
 26 Plaintiff cannot establish her First Cause of Action for Retaliation and Fourth
 27 Cause of Action for Disability Discrimination against him. (Complaint, ¶¶ 21-29,
 28

1 45-51.) For the reasons stated herein, Plaintiff's First and Fourth Causes of Action
 2 against Caraway fail as a matter of law.

3 **1. Caraway Cannot Be Personally Liable For Plaintiff's**
 4 **Disability Discrimination Claim**

5 14. Plaintiff has brought a disability discrimination claim under FEHA
 6 against Caraway. As a matter of law, supervisory employees cannot be personally
 7 liable for management decisions later alleged to be discriminatory under FEHA.
 8 Reno v. Baird, 18 Cal.4th 640, 645-646 (1998); Janken v. GM Hughes Electronics,
 9 46 Cal.App.4th 55, 62 (1996). Personnel decisions that could give rise to a
 10 discrimination claim are an inherent and unavoidable part of the supervisory
 11 function. Thus, only the employer can be liable for discrimination, not the
 12 supervisors to whom the employer has delegated the task of making such
 13 decisions. Reno, 18 Cal.4th at 645-646.

14 15. Here, Plaintiff is seeking to hold Caraway personally liable for the
 15 alleged discrimination at the workplace. Because Caraway cannot be personally
 16 liable, the claim may not proceed against him.

17 **2. Caraway Cannot Be Personally Liable For Plaintiff's**
 18 **Retaliation Claim**

19 16. Plaintiff has also brought a retaliation claim against Caraway.
 20 Caraway cannot be personally liable for retaliation under FEHA. Only employers
 21 can be liable for retaliation under FEHA. Jones v. The Lodge at Torrey Pines
 22 Partnership, 42 Cal.4th 1158 (2008). Thus, Plaintiff's retaliation claim against
 23 Caraway fails as a matter of law.

24 **3. Caraway Is A Sham Defendant Because There Can Be No**
 25 **Individual Liability For Managers For Tort Claims Arising**
From The Course And Scope Of Employment

26 17. Plaintiff alleges that she was an employee of Defendant and that
 27 Caraway was Defendant's Senior Portfolio Manager. (Complaint, ¶ 3.) According
 28 to Plaintiff, Caraway "is, and at all times mentioned in this Complaint was ... the

1 Senior Portfolio Manager at [AvalonBay] and was Plaintiff's supervisor while she
 2 was working at [AvalonBay]." (Complaint, ¶ 3.) Plaintiff also alleges that "all
 3 Defendants acted as agents of all other Defendants in committing the acts alleged
 4 herein." (Complaint, ¶ 7.)

5 18. Under the doctrine of managerial privilege, individual managers
 6 cannot be held personally liable for tort claims brought by other employees arising
 7 from actions taken within the course and scope of their managerial capacity.
 8 McCabe, 811 F.2d at 1339 (applying California law, Court held that plaintiff's tort
 9 claims against two individual managers failed as a matter of law because "[the
 10 managers'] actions, according to the complaint, had been in their managerial
 11 capacity ... [and] ratified by [their employer] [I]t is clear that 'if an agent is
 12 motivated in part by a desire to benefit his principle,' his conduct is, under
 13 California law, privileged.") (citation omitted); Sheppard v. Freeman, 67
 14 Cal.App.4th 339, 346-47 (1998) ("Personnel actions are made for the benefit of the
 15 enterprise - the employer, and it is the employer, and not the individual employees,
 16 that must bear the risks and responsibilities attendant to these actions," and "an
 17 employee or former employee cannot sue individual employees based on their
 18 conduct, including acts or words relating to personnel actions."); Aalgaard v.
 19 MERCHANTS NAT'L BANK, INC., 224 Cal.App.3d 674, 684-86 (1990) (individual
 20 defendant employee's conduct was protected from liability by the manager's
 21 privilege), cert. denied, 502 U.S. 901 (1991); Becket v. Welton Becket & Assocs.,
 22 39 Cal.App.3d 815, 823-24 (1974) (claims against corporate officer dismissed on
 23 managerial immunity grounds because the officer's acts occurred within course and
 24 scope of employment); Marin v. Jacuzzi, 224 Cal.App.2d 549 (1964) (claims
 25 against another employee dismissed on managerial immunity grounds).

26 19. Plaintiff's allegations that Caraway subjected her to discrimination in
 27 retaliation for her complaints about the wage and hour violations and request for
 28 reasonable accommodations thereby causing Plaintiff to suffer severe emotional

1 distress even if true, are not actionable, because it occurred within the course and
 2 scope of his employment. Accordingly, Caraway's alleged conduct is protected by
 3 the managerial privilege. (Complaint, ¶¶ 24, 28.)

4 **C. The Doe Defendants**

5 20. The presence of Doe defendants in this case has no bearing on
 6 diversity of citizenship for removal. 28 U.S.C. § 1441(a) ("For purposes of
 7 removal under this chapter, the citizenship of defendants sued under fictitious
 8 names shall be disregarded.").

9 21. Pursuant to 28 U.S.C. § 1441(a), the residence of fictitious and
 10 unknown defendants should be disregarded for purposes of establishing removal
 11 jurisdiction under 28 U.S.C. § 1332. Fristos v. Reynolds Metals Co., 615 F.2d
 12 1209, 1213 (9th Cir. 1980) (unnamed defendants are not required to join in a
 13 removal petition). Thus, the existence of Doe defendants one through twenty-five,
 14 inclusive, does not deprive this Court of jurisdiction.

15 **D. Amount In Controversy**

16 22. The amount in controversy exceeds the sum of \$75,000, exclusive of
 17 interest and costs.

18 23. Plaintiff seeks an unspecified amount of compensatory and exemplary
 19 damages, economic and emotional distress damages, and costs and attorneys' fees
 20 in connection with the causes of action specified in the Complaint. The omission
 21 in the Complaint of a specified amount of total damages sought by Plaintiff does
 22 not deprive this Court of jurisdiction. See White v. J.C. Penny Life Insurance
 23 Company, 861 F.Supp.25, 26 (S.D. W.Va. 1994) (defendant may remove suit to a
 24 federal court notwithstanding the failure of plaintiff to plead a specific dollar
 25 amount in controversy; if the rules were otherwise, "any plaintiff could avoid
 26 removal simply by declining ... to place a specific dollar amount upon its claim.")
 27 Defendant need only establish by a preponderance of the evidence that Plaintiff's
 28 claims are likely to exceed the jurisdictional minimum. Sanchez v. Monumental

1 Life Ins., 95 F.3d 856, 862 (9th Cir. 1996) (“[D]efendant must provide evidence
 2 establishing that it is ‘more likely than not’ that the amount in controversy exceeds
 3 [the threshold] amount.”); Singer v. State Farm Mutual Auto. Ins. Co., 116 F.3d
 4 373, 376 (9th Cir. 1997). “The amount-in-controversy inquiry in the removal
 5 context is not confined to the face of the complaint.” Valdez v. Allstate Ins. Co.,
 6 372 F.3d 1115, 1117 (9th Cir. 2004) (finding that the Court may consider facts
 7 presented in the removal petition).

8 24. A court may consider the aggregate value of claims for compensatory
 9 and punitive damages, as well as attorneys' fees. See, e.g., Bell v. Preferred Life
 10 Ass. Soc'y, 320 U.S. 238, 240 (1943) (“Where both actual and punitive damages
 11 are recoverable under a complaint each must be considered to the extent claimed in
 12 determining jurisdictional amount.”) (footnote omitted); Goldberg v. CPC Int'l,
 13 Inc., 678 F.2d 1365, 1367 (9th Cir. 1982) cert. denied, 459 U.S. 945 (1982)
 14 (attorneys' fees may be taken into account to determine jurisdictional amount);
 15 Haase v. Aerodynamics Inc., 2009 WL 3368519, *4 (E.D. Cal. 2009) (punitive
 16 damages may be considered in determining amount in controversy if they are
 17 recoverable as a matter of state law); Galt G/S v. JSS Scandinavia, 142 F. 3d 1150,
 18 1155-56 (9th Cir. 1998) (attorneys' fees may be counted towards amount in
 19 controversy if recoverable under statute or contract).

20 25. Plaintiff's alleged damages, if proven, exceed the \$75,000 threshold
 21 of 28 U.S.C. § 1332(a). Plaintiff asserts claims for retaliation, failure to prevent
 22 retaliation, discrimination on the bases of race, national origin and ancestry and
 23 disability discrimination. (Complaint, ¶¶ 21-51.) Plaintiff seeks damages
 24 including economic damages, special damages for emotional distress and punitive
 25 damages. (Complaint, ¶¶ 27-29, 34-36, 41-44, 49-51 and “Prayer.”) She alleges
 26 that she has sustained “substantial losses of earnings and other employment
 27 benefits” including “loss of income, loss of earning capacity, loss of job
 28 opportunity and other losses.” (Complaint, ¶¶ 42, 49.) Plaintiff claims that she

1 suffered, and continues to suffer, from “humiliation, emotional distress, and mental
2 and physical pain and anguish.” (Complaint, ¶¶ 28, 34, 41, 50.) She also seeks to
3 recover attorneys’ fees. (Complaint, ¶¶ 29, 36, 43, 51 and “Prayer”).

4 26. Moreover, plaintiffs alleging emotional distress as a result of an
5 adverse employment action regularly seek in excess of \$75,000 in such damages.
6 See, e.g., Keiffer v. Bechtel Corp., 65 Cal.App.4th 893, 895 (1998) (upholding jury
7 award in excess of \$75,000 for emotional distress damages); Satrap v. Pacific Gas
8 & Elec. Co., 42 Cal.App.4th 72, 76 (1996) (jury award in excess of \$75,000 in
9 non-economic damages was upheld). Given the claims and damages sought in
10 Plaintiff’s Complaint, the amount in controversy requirement has been met and this
11 action is removable under 28 U.S.C. §§ 1332 and 1441.

12 **III. VENUE**

13 27. Plaintiff originally filed this action in the Superior Court of the State
14 of California, County of Los Angeles. The County of Los Angeles lies within the
15 jurisdiction of the United States District Court, Central District.

16 28. Therefore, venue lies in the Central District of this Court pursuant to
17 28 U.S.C. §§ 84(c), 1441(a) and 1446(a). This Court is the United States District
18 Court for the district within which the State Court Action is pending. Thus, venue
19 lies in this Court pursuant to 28 U.S.C. § 1441(a).

20 **IV. TIMELINESS OF REMOVAL**

21 29. This Notice of Removal is timely pursuant to 28 U.S.C. § 1446(b)
22 because it is being filed within thirty (30) days of personal service of the Summons
23 and Complaint on Defendant on June 20, 2012, and within one (1) year of the
24 commencement of this action.

25 30. A true and correct copy of this Notice of Removal will be promptly
26 served on Plaintiff and filed with the Clerk of the Superior Court of the State of
27 California, County of Los Angeles, as required under 28 U.S.C. § 1446(d).

28

1 **WHEREFORE**, Defendant prays that this civil action be removed from the
2 Superior Court of the State of California, County of Los Angeles, to the United
3 States District Court for the Central District of California.

4

5 DATED: July 17, 2012

EPSTEIN BECKER & GREEN, P.C.

6

7

By:

MICHAEL S. KUN
WILLIAM O. STEIN
LISA M. WATANABE
Attorneys for Defendant
AVALONBAY COMMUNITIES,
INC.

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

EXHIBIT A

Oct 2012 C2 SJ

SUM-100

**SUMMONS
(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

AVALONBAY COMMUNITIES, INC., a corporation; RANDALL CARAWAY, an individual; and DOES 1-25, inclusive

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

DANA CONCEPCION

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)**ORIGINAL FILED**

JUN 13 2012

LOS ANGELES
SUPERIOR COURT

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

(AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.)

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): Los Angeles Superior Court
300 East Olive Avenue, Burbank, CA 91502

CASE NUMBER:
(Número del Caso)

20058728

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Newport Trial Group, 895 Dove Street, Suite 425, Newport Beach, CA 92660

DATE: *JUN 13 2012* Clerk, by _____ Deputy _____
(Fecha) *JANNA CLARKE* (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

N. L.

NOTICE TO THE PERSON SERVED: You are served

- as an individual defendant.
- as the person sued under the fictitious name of (specify):

- on behalf of (specify):

Avalonbay Communities, Inc., a corporation

under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify):

- by personal delivery on (date): *06/20/12*

SUPERIOR COURT OF CALIFORNIA COUNTY OF LOS ANGELES		RESERVED FOR CLERK FILE STAMP
	North Central District 300 East Olive Avenue Burbank, CA 91502	ORIGINAL FILED JUN 13 2012
NOTICE OF ORDER TO SHOW CAUSE RE FAILURE TO COMPLY WITH TRIAL COURT DELAY REDUCTION ACT		LOS ANGELES SUPERIOR COURT CASE NUMBER: E0058728

TO THE PLAINTIFF(S) AND/OR THEIR ATTORNEY(S) OF RECORD:

Pursuant to California Rules of Court, Rule 3.110, all complaints shall be served and a proof of service thereof shall be filed within 60 days of the date the complaint is filed, unless the defendant makes an appearance within that 60 days. Plaintiff's failure to meet this deadline may result in sanctions.

PLEASE TAKE NOTE that this matter is set for an order to show cause why the plaintiff should not be sanctioned for failure to comply with the rules described above on:

Date:

AUG 28 2012

Time: 8:30 am

Dept.:

A

B

Address: 300 EAST OLIVE AVENUE, BURBANK, CA 91502

At such time and place, the Court may (1) impose such sanctions as are authorized by law, including dismissal for failure to prosecute (Code of Civil Procedure Section 583.150 and Government Code Section 68608(b)) and (2) make further appropriate orders regarding the preparation of the case for trial.

PLEASE TAKE FURTHER NOTICE that no appearance is necessary at the hearing set forth above if there is (1) a proof of service filed and/or (2) an appearance in the action (i.e. by answer, demurrer, or motion contesting jurisdiction) by each named defendant BEFORE the date set for hearing. Plaintiff's appearance is MANDATORY, however, if any named defendants remain unserved at the date set for the hearing.

Date:

JUN 13 2012

Judge of the Superior Court
MARY THORNTON HOUSE
SUPERVISING JUDGE

CERTIFICATE OF SERVICE

I, the below named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the NOTICE OF ORDER TO SHOW CAUSE RE FAILURE TO COMPLY WITH TRIAL COURT DELAY REDUCTION ACT upon each party or counsel named below:

- By depositing in the United States mail at the courthouse in Burbank, California, one copy of the original filed herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid.
- by personally giving the party a copy of this notice upon filing of the complaint.

Date: _____

JUN 13 2012

John A. Clarke, Executive Officer / Clerk

By: _____

John A. Clarke
Deputy Clerk

NOTICE OF ORDER TO SHOW CAUSE RE FAILURE TO COMPLY WITH TRIAL COURT DELAY REDUCTION ACT

EXHIBIT A PAGE 12

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES**

COURTHOUSE ADDRESS: NORTH CENTRAL - BURBANK
300 EAST OLIVE AVENUE
BURBANK, CA 91502

PLAINTIFF:

DEFENDANT:

NOTICE OF CASE MANAGEMENT CONFERENCE

TO THE PLAINTIFF(S)/ATTORNEY(S) FOR PLAINTIFF(S) OF RECORD:

You are ordered to serve this notice of hearing on all parties/attorneys of record forthwith, and meet and confer with all parties/attorneys of record about the matters to be discussed no later than 30 days before the Case Management Conference.

Your Case Management Conference has been scheduled at the courthouse address shown above on:

Date: NOV 6 2012

Time: 8:30 AM

A / B

CASE NUMBER: 50058728

ORIGINAL FILED
JUN 13 2012
LOS ANGELES
SUPERIOR COURT

Pursuant to California Rules of Court, rule 212, a completed Case Management Statement (Judicial Council form # CM-110) must be filed at least 15 calendar days prior to the Case Management Conference. The Case Management Statement may be filed jointly by all parties/attorneys of record or individually by each party/attorney of record. You must be familiar with the case and be fully prepared to participate effectively in the Case Management Conference.

At the Case Management Conference, the Court may make pretrial orders including the following, but not limited to, an order establishing a discovery schedule; an order referring the case to Alternative Dispute Resolution (ADR); an order reclassifying the case; an order dismissing fictitious/unnamed defendants; an order setting subsequent conference and the trial date; or other orders to achieve the goals of the Trial Court Delay Reduction Act (Gov. Code § 68600 et seq.)

Notice is hereby given that if you do not file the Case Management Statement or appear and effectively participate at the Case Management Conference, the Court may impose sanctions, pursuant to LASC Local Rule 7.13, Code of Civil Procedure sections 177.5 575.2, 583.150, 583.360 and 583.410, Government Code section 68608, subdivision (b), and California Rules of Court, rule 200 et seq.

Date: JUN 13 2012

Judge of the Superior Court

CERTIFICATE OF SERVICE

I, the below named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the NOTICE OF CASE MANAGEMENT CONFERENCE upon each party or counsel named below:

- By depositing in the United States mail at the courthouse in Burbank, California, one copy of the original filed herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid.
- by personally giving the party a copy of this notice upon filing of the complaint.

Date: JUN 13 2012

John A. Clarke, Executive Officer / Clerk

By: J. Hause

Deputy Clerk

THE SUPERIOR COURT NORTH CENTRAL DISTRICT

CASE NO. EC 058728
TO ATTORNEY OF RECORD

ASSIGNED TO JUDGE WILLIAM D. STEWART / DONNA FIELDS GOLDSTEIN
FOR ALL PROCEEDINGS, IN DEPT. NCA / NCB
300 EAST OLIVE AVENUE, BURBANK CA 91502

Your case has been assigned to the Trial Delay Reduction Program in Los Angeles County Superior Court. It is your responsibility as an attorney to immediately familiarize yourself with the detailed provision of Chapter 3, Los Angeles County Superior Court Rules. A reading of this Notice does not relieve you of these rules. The following critical provisions are summarized for your assistance in avoiding immediate and severe rule violations.

APPLICATION

The Chapter 3 Rules shall apply to all civil cases filed in or transferred to the North Central District.

PRIORITY OVER OTHER RULES

All Court policy statements and policy manuals will be applicable, if appropriate, except to the extent that they are inconsistent with Chapter 3 Rules or any Orders made thereunder.

TIME STANDARDS

Cases filed in or transferred to the North Central District will be subject to processing under the following standards:

Complaints: All Complaints shall be served and a proof of service shall be filed within 60 days of filing.

Cross-Complaints: Without leave of Court first being obtained, no cross complaint may be filed by any party after their answer is filed. Cross-complaint and a proof of service shall be filed within 30 days of the filing date.

Discovery Regulation: The Court shall regulate the timing, scope and completion of all discovery, including discovery pursuant to Code of Civil Procedure Section 2034 consistent with Government Code Section 8616 ET.

SEC. Counsel should attempt to complete all discovery except depositions of experts by the Case Management Conference 140 days after the filing of the complaint.

Request for Trial Setting: Will no longer be used in the North Central District.

CASE MANAGEMENT CONFERENCE

The conference shall be held on the first available court day following 140 days after the complaint is filed. The date for conference will be assigned by the Clerk when the complaint is filed. Plaintiff shall serve notice of the conference on all parties in the case at least forty five (45) days prior to the date of said status conference.

STATUS CONFERENCE/SETTLEMENT CONFERENCE

A status/settlement conference may be calendared at the Court's discretion. Trial attorney and parties in propria persona must appear at the status conference. Compliance with Los Angeles Superior Court Local Rule 3.9(d) is required unless expressly excused by the Court.

SANCTIONS

The Court will impose appropriate sanctions for the failure or refusal (1) to comply with the Rule; (2) to comply with any Order made hereunder; or (3) to meet the time standards and/or deadlines established herein. Such sanctions may include: (1) dismissal of the action; (2) striking of a responsible pleading and entry of default; (3) vacating a trial date with the possible consequence of dismissal under Code of Civil Procedure, Section 583.36 or 583.420; (4) evidentiary and witness limitation restrictions or exclusions; (5) reasonable monetary sanctions, and/or (6) other reasonable sanctions as authorized by Code of Civil Procedure, Sections 128, 128.5, 177.5, 575.2, 583.430, 2016-2036, Government Code Section 68609(d), and California Rule of Court 2.30. Such sanctions may be imposed on a party and/or if appropriate, on the Counsel for such party. Plaintiff's and defendant's Counsel are ordered to serve a copy of these Orders on all defendants and cross-defendants concurrent with service of the summons and complaint or cross complaint.



Mary Thornton House
Supervising Judge
North Central District

ORIGINAL FILED

CM-010

COPY
COPY
COPY

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
 David R. Reid (SBN 267382) / Steven R. Telles (SBN 246514)
 NEWPORT TRIAL GROUP
 895 Dove Street, Suite 425, Newport Beach, CA 92660

TELEPHONE NO.: 949-706-6464
ATTORNEY FOR (Name): Plaintiff

FAX NO.: 949-706-6469

FOR COURT USE ONLY

JUN 13 2012

LOS ANGELES
SUPERIOR COURT

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles Superior Court
 STREET ADDRESS: 300 East Olive Avenue
 MAILING ADDRESS:
 CITY AND ZIP CODE: Burbank 91502
 BRANCH NAME: North Central District

CASE NAME:
Concepcion v Avalonbay

CIVIL CASE COVER SHEET

Unlimited Limited
 (Amount demanded exceeds \$25,000) (Amount demanded is \$25,000 or less)

Complex Case Designation

Counter Joinder

Filed with first appearance by defendant
(Cal. Rules of Court, rule 3.402)

CASE NUMBER

EC058728

JUDGE:

DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort

- Auto (22)
 Uninsured motorist (46)

Other PI/PD/WD (Personal Injury/Property

Damage/Wrongful Death) Tort

- Asbestos (04)
 Product liability (24)
 Medical malpractice (45)
 Other PI/PD/WD (23)

Non-PI/PD/WD (Other) Tort

- Business tort/unfair business practice (07)
 Civil rights (08)
 Defamation (13)
 Fraud (16)
 Intellectual property (19)
 Professional negligence (25)
 Other non-PI/PD/WD tort (35)

Employment

- Wrongful termination (36)
 Other employment (15)

Contract

- Breach of contract/warranty (06)
 Rule 3.740 collections (09)
 Other collections (09)

Real Property

- Insurance coverage (18)
 Other contract (37)
 Eminent domain/inverse condemnation (14)
 Wrongful eviction (33)
 Other real property (26)

Unlawful Detainer

- Commercial (31)
 Residential (32)
 Drugs (38)

Judicial Review

- Asset forfeiture (05)
 Petition re: arbitration award (11)
 Writ of mandate (02)
 Other judicial review (39)

Provisionally Complex Civil Litigation
(Cal. Rules of Court, rules 3.400-3.403)

- Antitrust/Trade regulation (03)
 Construction defect (10)
 Mass tort (40)
 Securities litigation (28)
 Environmental/Toxic tort (30)
 Insurance coverage claims arising from the above listed provisionally complex case types (41)

Enforcement of Judgment

- Enforcement of judgment (20)

Miscellaneous Civil Complaint

- RICO (27)
 Other complaint (not specified above) (42)

Miscellaneous Civil Petition

- Partnership and corporate governance (21)
 Other petition (not specified above) (43)

2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

- a. Large number of separately represented parties
 b. Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
 c. Substantial amount of documentary evidence
 d. Large number of witnesses
 e. Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
 f. Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive

4. Number of causes of action (specify): Four

5. This case is is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: June 13, 2012

David R. Reid

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

Auto Tort

- Auto (22)–Personal Injury/Property
- Damage/Wrongful Death
- Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

- Asbestos (04)
- Asbestos Property Damage
- Asbestos Personal Injury
- Wrongful Death
- Product Liability (*not asbestos or toxic/environmental*) (24)
- Medical Malpractice (45)
- Medical Malpractice–
- Physicians & Surgeons
- Other Professional Health Care
- Malpractice
- Other PI/PD/WD (23)
- Premises Liability (e.g., slip and fall)
- Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
- Intentional Infliction of Emotional Distress
- Negligent Infliction of Emotional Distress
- Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

- Business Tort/Unfair Business Practice (07)
- Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
- Defamation (e.g., slander, libel) (13)
- Fraud (16)
- Intellectual Property (19)
- Professional Negligence (25)
- Legal Malpractice
- Other Professional Malpractice (*not medical or legal*)
- Other Non-PI/PD/WD Tort (35)

Employment

- Wrongful Termination (36)
- Other Employment (15)

CASE TYPES AND EXAMPLES

Contract	Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)
Breach of Contract/Warranty (06)	Antitrust/Trade Regulation (03)
Breach of Rental/Lease	Construction Defect (10)
Contract (<i>not unlawful detainer or wrongful eviction</i>)	Claims Involving Mass Tort (40)
Contract/Warranty Breach–Seller	Securities Litigation (28)
Plaintiff (<i>not fraud or negligence</i>)	Environmental/Toxic Tort (30)
Negligent Breach of Contract/	Insurance Coverage Claims
Warranty	(<i>arising from provisionally complex case type listed above</i>) (41)
Other Breach of Contract/Warranty	Enforcement of Judgment
Collections (e.g., money owed, open book accounts) (09)	Enforcement of Judgment (20)
Collection Case–Seller Plaintiff	Abstract of Judgment (Out of County)
Other Promissory Note/Collections Case	Confession of Judgment (<i>non-domestic relations</i>)
Insurance Coverage (<i>not provisionally complex</i>) (18)	Sister State Judgment
Auto Subrogation	Administrative Agency Award (<i>not unpaid taxes</i>)
Other Coverage	Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Contract (37)	Other Enforcement of Judgment Case
Contractual Fraud	Miscellaneous Civil Complaint
Other Contract Dispute	RICO (27)
Real Property	Other Complaint (<i>not specified above</i>) (42)
Eminent Domain/Inverse Condemnation (14)	Declaratory Relief Only
Wrongful Eviction (33)	Injunctive Relief Only (<i>non-harassment</i>)
Other Real Property (e.g., quiet title) (26)	Mechanics Lien
Writ of Possession of Real Property	Other Commercial Complaint Case (<i>non-tort/non-complex</i>)
Mortgage Foreclosure	Other Civil Complaint (<i>non-tort/non-complex</i>)
Quiet Title	Miscellaneous Civil Petition
Other Real Property (<i>not eminent domain, landlord/tenant, or foreclosure</i>)	Partnership and Corporate Governance (21)
Unlawful Detainer	Other Petition (<i>not specified above</i>) (43)
Commercial (31)	Civil Harassment
Residential (32)	Workplace Violence
Drugs (38) (<i>if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential</i>)	Elder/Dependent Adult Abuse
Judicial Review	Election Contest
Asset Forfeiture (05)	Petition for Name Change
Petition Re: Arbitration Award (11)	Petition for Relief From Late Claim
Writ of Mandate (02)	Other Civil Petition
Writ–Administrative Mandamus	
Writ–Mandamus on Limited Court Case Matter	
Writ–Other Limited Court Case Review	
Other Judicial Review (39)	
Review of Health Officer Order	
Notice of Appeal–Labor Commissioner Appeals	

SHORT TITLE: CONCEPCION v AVALONBAY, et al.	CASE NUMBER EC 058728
--	---------------------------------

COPY

**CIVIL CASE COVER SHEET ADDENDUM AND
STATEMENT OF LOCATION
(CERTIFICATE OF GROUNDS FOR ASSIGNMENT TO COURTHOUSE LOCATION)**

This form is required pursuant to Local Rule 2.0 in all new civil case filings in the Los Angeles Superior Court.

Item I. Check the types of hearing and fill in the estimated length of hearing expected for this case:

JURY TRIAL? YES CLASS ACTION? YES LIMITED CASE? YES TIME ESTIMATED FOR TRIAL 5-7 HOURS/ DAYS

Item II. Indicate the correct district and courthouse location (4 steps – If you checked “Limited Case”, skip to Item III, Pg. 4):

Step 1: After first completing the Civil Case Cover Sheet form, find the main Civil Case Cover Sheet heading for your case in the left margin below, and, to the right in Column A, the Civil Case Cover Sheet case type you selected.

Step 2: Check one Superior Court type of action in Column B below which best describes the nature of this case.

Step 3: In Column C, circle the reason for the court location choice that applies to the type of action you have checked. For any exception to the court location, see Local Rule 2.0.

Applicable Reasons for Choosing Courthouse Location (see Column C below)

- | | |
|---|---|
| 1. Class actions must be filed in the Stanley Mosk Courthouse, central district.
2. May be filed in central (other county, or no bodily injury/property damage).
3. Location where cause of action arose.
4. Location where bodily injury, death or damage occurred.
5. Location where performance required or defendant resides. | 6. Location of property or permanently garaged vehicle.
7. Location where petitioner resides.
8. Location wherein defendant/respondent functions wholly.
9. Location where one or more of the parties reside.
10. Location of Labor Commissioner Office |
|---|---|

Step 4: Fill in the information requested on page 4 in Item III; complete Item IV. Sign the declaration.

A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Auto (22)	<input type="checkbox"/> A7100 Motor Vehicle - Personal Injury/Property Damage/Wrongful Death	1., 2., 4.
Uninsured Motorist (46)	<input type="checkbox"/> A7110 Personal Injury/Property Damage/Wrongful Death – Uninsured Motorist	1., 2., 4.
Asbestos (04)	<input type="checkbox"/> A6070 Asbestos Property Damage <input type="checkbox"/> A7221 Asbestos - Personal Injury/Wrongful Death	2. 2.
Product Liability (24)	<input type="checkbox"/> A7260 Product Liability (not asbestos or toxic/environmental)	1., 2., 3., 4., 8.
Medical Malpractice (45)	<input type="checkbox"/> A7210 Medical Malpractice - Physicians & Surgeons <input type="checkbox"/> A7240 Other Professional Health Care Malpractice	1., 4. 1., 4.
Other Personal Injury/ Property Damage/ Wrongful Death (23)	<input type="checkbox"/> A7250 Premises Liability (e.g., slip and fall) <input type="checkbox"/> A7230 Intentional Bodily Injury/Property Damage/Wrongful Death (e.g., assault, vandalism, etc.) <input type="checkbox"/> A7270 Intentional Infliction of Emotional Distress <input type="checkbox"/> A7220 Other Personal Injury/Property Damage/Wrongful Death	1., 4. 1., 4. 1., 3. 1., 4.

SHORT TITLE: CONCEPCION v AVALONBAY, et al.		CASE NUMBER	
	A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Non-Personal Injury/ Property Damage/ Wrongful Death Tort	Business Tort (07)	<input type="checkbox"/> A6029 Other Commercial/Business Tort (not fraud/breach of contract)	1., 3.
	Civil Rights (08)	<input type="checkbox"/> A6005 Civil Rights/Discrimination	1., 2., 3.
	Defamation (13)	<input type="checkbox"/> A6010 Defamation (slander/libel)	1., 2., 3.
	Fraud (16)	<input type="checkbox"/> A6013 Fraud (no contract)	1., 2., 3.
	Professional Negligence (25)	<input type="checkbox"/> A6017 Legal Malpractice	1., 2., 3.
		<input type="checkbox"/> A6050 Other Professional Malpractice (not medical or legal)	1., 2., 3.
Employment	Other (35)	<input type="checkbox"/> A6025 Other Non-Personal Injury/Property Damage tort	2., 3.
	Wrongful Termination (36)	<input checked="" type="checkbox"/> A6037 Wrongful Termination	1., 2., 3.
	Other Employment (15)	<input type="checkbox"/> A6024 Other Employment Complaint Case <input type="checkbox"/> A6109 Labor Commissioner Appeals	1., 2., 3. 10.
Contract	Breach of Contract/ Warranty (06) (not insurance)	<input type="checkbox"/> A6004 Breach of Rental/Lease Contract (not unlawful detainer or wrongful eviction) <input type="checkbox"/> A6008 Contract/Warranty Breach -Seller Plaintiff (no fraud/negligence) <input type="checkbox"/> A6019 Negligent Breach of Contract/Warranty (no fraud) <input type="checkbox"/> A6028 Other Breach of Contract/Warranty (not fraud or negligence)	2., 5. 2., 5. 1., 2., 5. 1., 2., 5.
	Collections (09)	<input type="checkbox"/> A6002 Collections Case-Seller Plaintiff <input type="checkbox"/> A6012 Other Promissory Note/Collections Case	2., 5., 6. 2., 5.
	Insurance Coverage (18)	<input type="checkbox"/> A6015 Insurance Coverage (not complex)	1., 2., 5., 8.
	Other Contract (37)	<input type="checkbox"/> A6009 Contractual Fraud <input type="checkbox"/> A6031 Tortious Interference <input type="checkbox"/> A6027 Other Contract Dispute(not breach/insurance/fraud/negligence)	1., 2., 3., 5. 1., 2., 3., 5. 1., 2., 3., 8.
Real Property	Eminent Domain/Inverse Condemnation (14)	<input type="checkbox"/> A7300 Eminent Domain/Condemnation Number of parcels _____	2.
	Wrongful Eviction (33)	<input type="checkbox"/> A6023 Wrongful Eviction Case	2., 6.
	Other Real Property (26)	<input type="checkbox"/> A6018 Mortgage Foreclosure <input type="checkbox"/> A6032 Quiet Title <input type="checkbox"/> A6060 Other Real Property (not eminent domain, landlord/tenant, foreclosure)	2., 6. 2., 6. 2., 6.
Unlawful Detainer	Unlawful Detainer-Commercial (31)	<input type="checkbox"/> A6021 Unlawful Detainer-Commercial (not drugs or wrongful eviction)	2., 6.
	Unlawful Detainer-Residential (32)	<input type="checkbox"/> A6020 Unlawful Detainer-Residential (not drugs or wrongful eviction)	2., 6.
	Unlawful Detainer- Post-Foreclosure (34)	<input type="checkbox"/> A6020F Unlawful Detainer-Post-Foreclosure	2., 6.
	Unlawful Detainer-Drugs (38)	<input type="checkbox"/> A6022 Unlawful Detainer-Drugs	2., 6.

SHORT TITLE: CONCEPCION v AVALONBAY, et al.		CASE NUMBER																		
<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: center; width: 33.33%;">A Civil Case Cover Sheet Category No.</th> <th style="text-align: center; width: 33.33%;">B Type of Action (Check only one)</th> <th style="text-align: center; width: 33.33%;">C Applicable Reasons - See Step 3 Above</th> </tr> </thead> <tbody> <tr> <td>Judicial Review</td> <td> <input type="checkbox"/> A6108 Asset Forfeiture Case <input type="checkbox"/> A6115 Petition to Compel/Confirm/Vacate Arbitration <input type="checkbox"/> A6151 Writ - Administrative Mandamus <input type="checkbox"/> A6152 Writ - Mandamus on Limited Court Case Matter <input type="checkbox"/> A6153 Writ - Other Limited Court Case Review <input type="checkbox"/> A6150 Other Writ /Judicial Review </td> <td> 2., 6. 2., 5. 2., 8. 2. 2. 2., 8. </td> </tr> <tr> <td>Provisionally Complex Litigation</td> <td> <input type="checkbox"/> A6003 Antitrust/Trade Regulation <input type="checkbox"/> A6007 Construction Defect <input type="checkbox"/> A6006 Claims Involving Mass Tort <input type="checkbox"/> A6035 Securities Litigation Case <input type="checkbox"/> A6036 Toxic Tort/Environmental <input type="checkbox"/> A6014 Insurance Coverage/Subrogation (complex case only) </td> <td> 1., 2., 8. 1., 2., 3. 1., 2., 8. 1., 2., 8. 1., 2., 3., 8. 1., 2., 5., 8. </td> </tr> <tr> <td>Enforcement of Judgment</td> <td> <input type="checkbox"/> A6141 Sister State Judgment <input type="checkbox"/> A6160 Abstract of Judgment <input type="checkbox"/> A6107 Confession of Judgment (non-domestic relations) <input type="checkbox"/> A6140 Administrative Agency Award (not unpaid taxes) <input type="checkbox"/> A6114 Petition/Certificate for Entry of Judgment on Unpaid Tax <input type="checkbox"/> A6112 Other Enforcement of Judgment Case </td> <td> 2., 9. 2., 6. 2., 9. 2., 8. 2., 8. 2., 8., 9. </td> </tr> <tr> <td>Miscellaneous Civil Complaints</td> <td> <input type="checkbox"/> A6033 Racketeering (RICO) Case <input type="checkbox"/> A6030 Declaratory Relief Only <input type="checkbox"/> A6040 Injunctive Relief Only (not domestic/harassment) <input type="checkbox"/> A6011 Other Commercial Complaint Case (non-tort/non-complex) <input type="checkbox"/> A6000 Other Civil Complaint (non-tort/non-complex) </td> <td> 1., 2., 8. 1., 2., 8. 2., 8. 1., 2., 8. 1., 2., 8. </td> </tr> <tr> <td>Miscellaneous Civil Petitions</td> <td> <input type="checkbox"/> A6113 Partnership and Corporate Governance Case <input type="checkbox"/> A6121 Civil Harassment <input type="checkbox"/> A6123 Workplace Harassment <input type="checkbox"/> A6124 Elder/Dependent Adult Abuse Case <input type="checkbox"/> A6190 Election Contest <input type="checkbox"/> A6110 Petition for Change of Name <input type="checkbox"/> A6170 Petition for Relief from Late Claim Law <input type="checkbox"/> A6100 Other Civil Petition </td> <td> 2., 8. 2., 3., 9. 2., 3., 9. 2., 3., 9. 2. 2., 7. 2., 3., 4., 8. 2., 9.. </td> </tr> </tbody> </table>			A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above	Judicial Review	<input type="checkbox"/> A6108 Asset Forfeiture Case <input type="checkbox"/> A6115 Petition to Compel/Confirm/Vacate Arbitration <input type="checkbox"/> A6151 Writ - Administrative Mandamus <input type="checkbox"/> A6152 Writ - Mandamus on Limited Court Case Matter <input type="checkbox"/> A6153 Writ - Other Limited Court Case Review <input type="checkbox"/> A6150 Other Writ /Judicial Review	2., 6. 2., 5. 2., 8. 2. 2. 2., 8.	Provisionally Complex Litigation	<input type="checkbox"/> A6003 Antitrust/Trade Regulation <input type="checkbox"/> A6007 Construction Defect <input type="checkbox"/> A6006 Claims Involving Mass Tort <input type="checkbox"/> A6035 Securities Litigation Case <input type="checkbox"/> A6036 Toxic Tort/Environmental <input type="checkbox"/> A6014 Insurance Coverage/Subrogation (complex case only)	1., 2., 8. 1., 2., 3. 1., 2., 8. 1., 2., 8. 1., 2., 3., 8. 1., 2., 5., 8.	Enforcement of Judgment	<input type="checkbox"/> A6141 Sister State Judgment <input type="checkbox"/> A6160 Abstract of Judgment <input type="checkbox"/> A6107 Confession of Judgment (non-domestic relations) <input type="checkbox"/> A6140 Administrative Agency Award (not unpaid taxes) <input type="checkbox"/> A6114 Petition/Certificate for Entry of Judgment on Unpaid Tax <input type="checkbox"/> A6112 Other Enforcement of Judgment Case	2., 9. 2., 6. 2., 9. 2., 8. 2., 8. 2., 8., 9.	Miscellaneous Civil Complaints	<input type="checkbox"/> A6033 Racketeering (RICO) Case <input type="checkbox"/> A6030 Declaratory Relief Only <input type="checkbox"/> A6040 Injunctive Relief Only (not domestic/harassment) <input type="checkbox"/> A6011 Other Commercial Complaint Case (non-tort/non-complex) <input type="checkbox"/> A6000 Other Civil Complaint (non-tort/non-complex)	1., 2., 8. 1., 2., 8. 2., 8. 1., 2., 8. 1., 2., 8.	Miscellaneous Civil Petitions	<input type="checkbox"/> A6113 Partnership and Corporate Governance Case <input type="checkbox"/> A6121 Civil Harassment <input type="checkbox"/> A6123 Workplace Harassment <input type="checkbox"/> A6124 Elder/Dependent Adult Abuse Case <input type="checkbox"/> A6190 Election Contest <input type="checkbox"/> A6110 Petition for Change of Name <input type="checkbox"/> A6170 Petition for Relief from Late Claim Law <input type="checkbox"/> A6100 Other Civil Petition	2., 8. 2., 3., 9. 2., 3., 9. 2., 3., 9. 2. 2., 7. 2., 3., 4., 8. 2., 9..
A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above																		
Judicial Review	<input type="checkbox"/> A6108 Asset Forfeiture Case <input type="checkbox"/> A6115 Petition to Compel/Confirm/Vacate Arbitration <input type="checkbox"/> A6151 Writ - Administrative Mandamus <input type="checkbox"/> A6152 Writ - Mandamus on Limited Court Case Matter <input type="checkbox"/> A6153 Writ - Other Limited Court Case Review <input type="checkbox"/> A6150 Other Writ /Judicial Review	2., 6. 2., 5. 2., 8. 2. 2. 2., 8.																		
Provisionally Complex Litigation	<input type="checkbox"/> A6003 Antitrust/Trade Regulation <input type="checkbox"/> A6007 Construction Defect <input type="checkbox"/> A6006 Claims Involving Mass Tort <input type="checkbox"/> A6035 Securities Litigation Case <input type="checkbox"/> A6036 Toxic Tort/Environmental <input type="checkbox"/> A6014 Insurance Coverage/Subrogation (complex case only)	1., 2., 8. 1., 2., 3. 1., 2., 8. 1., 2., 8. 1., 2., 3., 8. 1., 2., 5., 8.																		
Enforcement of Judgment	<input type="checkbox"/> A6141 Sister State Judgment <input type="checkbox"/> A6160 Abstract of Judgment <input type="checkbox"/> A6107 Confession of Judgment (non-domestic relations) <input type="checkbox"/> A6140 Administrative Agency Award (not unpaid taxes) <input type="checkbox"/> A6114 Petition/Certificate for Entry of Judgment on Unpaid Tax <input type="checkbox"/> A6112 Other Enforcement of Judgment Case	2., 9. 2., 6. 2., 9. 2., 8. 2., 8. 2., 8., 9.																		
Miscellaneous Civil Complaints	<input type="checkbox"/> A6033 Racketeering (RICO) Case <input type="checkbox"/> A6030 Declaratory Relief Only <input type="checkbox"/> A6040 Injunctive Relief Only (not domestic/harassment) <input type="checkbox"/> A6011 Other Commercial Complaint Case (non-tort/non-complex) <input type="checkbox"/> A6000 Other Civil Complaint (non-tort/non-complex)	1., 2., 8. 1., 2., 8. 2., 8. 1., 2., 8. 1., 2., 8.																		
Miscellaneous Civil Petitions	<input type="checkbox"/> A6113 Partnership and Corporate Governance Case <input type="checkbox"/> A6121 Civil Harassment <input type="checkbox"/> A6123 Workplace Harassment <input type="checkbox"/> A6124 Elder/Dependent Adult Abuse Case <input type="checkbox"/> A6190 Election Contest <input type="checkbox"/> A6110 Petition for Change of Name <input type="checkbox"/> A6170 Petition for Relief from Late Claim Law <input type="checkbox"/> A6100 Other Civil Petition	2., 8. 2., 3., 9. 2., 3., 9. 2., 3., 9. 2. 2., 7. 2., 3., 4., 8. 2., 9..																		

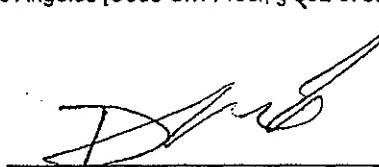
SHORT TITLE: CONCEPCION v AVALONBAY, et al.	CASE NUMBER
--	-------------

Item III. Statement of Location: Enter the address of the accident, party's residence or place of business, performance, or other circumstance indicated in Item II., Step 3 on Page 1, as the proper reason for filing in the court location you selected.

REASON: Check the appropriate boxes for the numbers shown under Column C for the type of action that you have selected for this case.			ADDRESS: 310 San Fernando Blvd., Suite 107
<input checked="" type="checkbox"/> 1. <input checked="" type="checkbox"/> 2. <input checked="" type="checkbox"/> 3. <input type="checkbox"/> 4. <input type="checkbox"/> 5. <input type="checkbox"/> 6. <input type="checkbox"/> 7. <input type="checkbox"/> 8. <input type="checkbox"/> 9. <input type="checkbox"/> 10.			
CITY: Burbank	STATE: CA	ZIP CODE: 91502	

Item IV. Declaration of Assignment: I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that the above-entitled matter is properly filed for assignment to the Burbank courthouse in the North Central District of the Superior Court of California, County of Los Angeles [Code Civ. Proc., § 392 et seq., and Local Rule 2.0, subds. (b), (c) and (d)].

Dated: June 13, 2012



(SIGNATURE OF ATTORNEY/FILING PARTY)

PLEASE HAVE THE FOLLOWING ITEMS COMPLETED AND READY TO BE FILED IN ORDER TO PROPERLY COMMENCE YOUR NEW COURT CASE:

1. Original Complaint or Petition.
2. If filing a Complaint, a completed Summons form for issuance by the Clerk.
3. Civil Case Cover Sheet, Judicial Council form CM-010.
4. Civil Case Cover Sheet Addendum and Statement of Location form, LACIV 109, LASC Approved 03-04 (Rev. 03/11).
5. Payment in full of the filing fee, unless fees have been waived.
6. A signed order appointing the Guardian ad Litem, Judicial Council form CIV-010, if the plaintiff or petitioner is a minor under 18 years of age will be required by Court in order to issue a summons.
7. Additional copies of documents to be conformed by the Clerk. Copies of the cover sheet and this addendum must be served along with the summons and complaint, or other initiating pleading in the case.

1 NEWPORT TRIAL GROUP
A Professional Corporation
2 David W. Reid, Bar No. 267382
dreib@trialnewport.com
3 Steven R. Telles, Bar No. 246514
stelles@trialnewport.com
4 895 Dove Street, Suite 425
Newport Beach, CA 92660
5 Tel: (949) 706-6464
Fax: (949) 706-6469

ORIGINAL FILED

JUN 13 2012

**LOS ANGELES
SUPERIOR COURT**

Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

DANA CONCEPCION,

EC058728

Plaintiff,

VS.

14 AVALONBAY COMMUNITIES, INC., a
corporation; RANDALL CARAWAY, an
individual; and DOES 1-25, inclusive.

Defendants.

PLAINTIFF'S COMPLAINT FOR:

PLAINTIFF'S COMPLAINT FOR:

(1) RETALIATION;
(2) FAILURE TO PREVENT
RETALIATION;
(3) DISCRIMINATION ON THE BASES OF
RACE, NATIONAL ORIGIN, AND
ANCESTRY;
(4) DISABILITY DISCRIMINATION

JURY TRIAL DEMANDED

Plaintiff, Dana Concepcion, alleges:

I. THE PARTIES

1. Plaintiff Dana Concepcion ("Plaintiff" or "Concepcion") is, and at all times mentioned in this Complaint was, a resident of Los Angeles County, California.

2. Plaintiff is informed and believes, and upon such information and belief alleges, that Defendant AvalonBay Communities, Inc. ("Defendant" or "AvalonBay") is a Maryland Corporation that does business in California.

26 3. Plaintiff is informed and believes, and upon such information and belief alleges, that
27 Defendant Randall Caraway (“Defendant” or “Caraway”) is, and at all times mentioned in this
28 Complaint was, employed by AvalonBay as the Senior Portfolio Manager at AvalonBay Communities,

1 Inc. and was Plaintiff's supervisor while she was working at the AvalonBay Communities, Inc. located
2 at 310 South San Fernando Blvd., Suite 107, Burbank, CA 91502. At all times known to Plaintiff,
3 Caraway was a resident of Los Angeles County, California.

4 4. Plaintiff does not know the true names or capacities of the persons or entities sued
5 herein as DOES 1 to 25, inclusive, and therefore sue such defendants by such fictitious names.
6 Plaintiff is informed and believes and thereon alleges that each of the DOE defendants is in some
7 manner legally responsible for the damages suffered by Plaintiff. Plaintiff will amend this Complaint
8 to set forth the true names and capacities of these defendants when they have been ascertained, along
9 with appropriate charging allegations, as may be necessary.

10 5. Defendant AvalonBay both directly and indirectly employed Plaintiff, as defined under
11 the Fair Employment and Housing Act ("FEHA") at Government Code § 12926(d).

12 6. In addition, Defendant AvalonBay compelled, coerced, aided, and abetted
13 discrimination, which is prohibited under California Government Code § 12940(i).

14 7. Finally, at all relevant times mentioned herein, all Defendants acted as agents of all
15 other Defendants in committing the acts alleged herein.

16 II. JURISDICTION AND VENUE

17 8. This Court has jurisdiction over all causes of action asserted herein pursuant to the
18 California Constitution.

19 9. Venue is proper in this Court because a substantial portion of the events giving rise to
20 this Complaint took place in this County.

21 III. FACTS

22 10. Plaintiff Concepcion, an African-American woman, began her employment with
23 AvalonBay as a Community Consultant on or around May of 2008. Concepcion excelled at her job.
24 At all times, Plaintiff performed her job duties well and was never warned or reprimanded prior to
25 seeking a reasonable accommodation for her serious medical condition.

26 11. Plaintiff was never warned that her job performance was lacking or that she needed to
27 improve. Instead, Concepcion was nationally and regionally recognized and awarded for her hard
28 work and dedication to AvalonBay. Concepcion consistently met her sales quotas and the

1 performance goals set forth by AvalonBay. Despite her excellent work performance, Concepcion was
 2 turned down for upper-management positions in favor of non-African-American applicants.
 3 Defendants discouraged Concepcion from applying for upper-management positions.

4 12. During Concepcion's employment, her manager, Mollee O'Connor ("O'Connor"),
 5 forced Concepcion to work overtime and "off the clock" without compensation. O'Conner instructed
 6 Concepcion and others to "clock out" and continue working "off the clock" in order to perform work
 7 for AvalonBay. Concepcion was not compensated for that time worked.

8 13. During Concepcion's employment, she was not provided opportunities to take rest
 9 breaks and not compensated for that time. Additionally, AvalonBay has failed to pay Concepcion
 10 commissions owed to her. Defendant Caraway was aware of the wage and hour violations and did not
 11 take steps to ensure plaintiff was properly compensated for the unpaid time.

12 14. During her employment, Concepcion developed some serious health conditions. On or
 13 about September 26, 2011, Concepcion informed her acting manager, Jason Peterson ("Peterson") of
 14 her serious health conditions (severe back pain, neck pain, and burning sensations in her feet making it
 15 difficult to walk) and requested a reasonable accommodation and time off to treat her conditions.
 16 Peterson reported Concepcion's request to defendant Caraway.

17 15. Only three days after requesting reasonable accommodations for her serious health
 18 conditions, Caraway began a campaign of discrimination and retaliation against Concepcion. Caraway
 19 reprimanded Peterson for not being hard enough on Concepcion. Caraway threatened Peterson's job if
 20 he did not resolve the "off the clock" issue Concepcion had been raising. On September 29, 2011,
 21 Peterson, under Caraway's guidance, threatened Concepcion by warning her that Michelle Santos was
 22 coming to the office to investigate her claims of being forced to work "off the clock" under O'Connor
 23 and that people were concerned she was going to sue the company for making her and others continue
 24 to work "off the clock." Peterson stated that "whatever [she] said in the past is now coming back to
 25 bite [her] in the ass." Peterson indicated that her job was in jeopardy because she was voicing her
 26 concerns over being forced to work "off the clock." When Concepcion inquired as to why this was
 27 being brought up only three days after she requested her reasonable accommodation, Peterson
 28 explained that Caraway had told him that he would be fired if he didn't "take care of the situation."

1 16. On October 13, 2011, a mere two weeks after Concepcion requested reasonable
2 accommodations for her serious health condition, Peterson, under Caraway's instruction, wrote her up
3 for failing to input information correctly on a pilot program she was never properly trained on. Up
4 until October 13, 2011, Peterson had informed Concepcion that she had been correctly using the
5 program. On October 18, 2011, Concepcion asked Peterson why he wrote her up for failing to
6 properly use the program she had never been trained on and Peterson simply told her that he was told
7 he "needed to write [her] up for it." Up until October 18, 2011, Peterson had informed Concepcion on
8 several occasions that she was doing a great job with lead management during their weekly meetings.
9 Peterson confessed that he had expressed Concepcion's concerns to Caraway and that Caraway had
10 threatened Peterson's job because Peterson was "not being hard enough" on Concepcion.

11 17. On October 19, 2011, Peterson suddenly informed Concepcion that her work schedule
12 was being shifted. Concepcion was given a less desirable schedule only weeks after requesting a
13 reasonable accommodation for her serious health condition. Concepcion believes and alleges that
14 Caraway instructed Peterson to move Concepcion's schedule in a way that would force her to want to
15 quit.

16 18. On October 20, 2011, Concepcion informed Peterson that she felt that she was being
17 retaliated against for speaking out about working "off the clock" and requesting reasonable
18 accommodations for her medical conditions. Peterson failed to address her concerns.

19 19. On October 21, 2011, Peterson met with Concepcion's co-workers in an attempt to seek
20 information he could use to find an excuse to terminate Concepcion. On October 25, 2011, Peterson
21 met with Concepcion and informed her that all of her co-workers felt as though Concepcion was
22 intimidating and threatening them. Concepcion, again, expressed her concern that she was being
23 retaliated against for speaking out about working "off the clock" and requesting reasonable
24 accommodations for her medical conditions. Concepcion believes and alleges that Caraway instructed
25 Peterson to seek information and reasons to terminate Concepcion because she was speaking out about
26 her retaliation and discrimination.

27 20. On or about November 8, 2011, Concepcion sent a detailed letter describing the
28 retaliation and discrimination to Veronica Robertazzi, the Human Resources Director. Concepcion's

1 concerns were not addressed. Concepcion went out on medical leave on January 9, 2012 is currently
2 out on medical leave.

3 **IV. CAUSES OF ACTION**

4 **FIRST CAUSE OF ACTION**

5 **RETALIATION**

6 **(By Plaintiff as against all Defendants and Does 1-25)**

7 21. Plaintiff incorporates by this reference the allegations contained in the preceding
8 paragraphs above as if fully set forth herein.

9 22. This action is brought pursuant to the California Fair Employment and Practices Act,
10 section 12940(h) of the Government Code, and applicable case law, which prohibit an employer from
11 discharging, discriminating, or otherwise retaliating against any person because the person has
12 opposed any practice forbidden under Government Code section 12940 et seq. and/or the
13 corresponding regulations of the California Fair Employment and Housing Commission and/or any
14 other laws. Within the time provided by law, Plaintiff filed a complaint with the DFEH, in full
15 compliance with administrative requirements and received a right-to-sue letter. Copies of the right-to-
16 sue letters are attached and incorporated by reference as Exhibit "A".

17 23. At all times in this complaint, Defendant AvalonBay regularly employed at least five
18 employees bringing the Defendant employer within the provisions of section 12940 et seq. of the
19 Government Code prohibiting employers or their agents from retaliating against an employee who
20 opposes practices forbidden under the Fair Employment and Housing Act.

21 24. As more fully set forth hereinabove, Plaintiff was subjected to retaliation while
22 employed by the Defendants after she complained about wage and hour violations and requested
23 reasonable accommodations for her serious medical conditions.

24 25. In retaliation for complaining about the wage and hour violations, and for taking or
25 requesting protected leaves and accommodations to medically care for herself, Defendants threatened
26 her termination, gave her an unfavorable shift in her work schedule, and unjustly wrote her up.

27 26. At a minimum, Plaintiff's complaints of wage and hour violations, as well as her
28 requests for protected medical leaves and reasonable accommodations, were substantial motivating

1 factors in Defendants' retaliation against Plaintiff, as described above.

2 27. As a direct and proximate result of Defendants' willful, knowing, and intentional
3 retaliation, Plaintiff has sustained and continues to sustain substantial losses of earnings and other
4 employment benefits.

5 28. As a proximate result of Defendants' willful, knowing, and intentional retaliation,
6 Plaintiff suffered and continues to suffer humiliation, emotional distress, and mental and physical pain
7 and anguish, all to her damage in a sum according to proof.

8 29. Defendants' retaliation of Plaintiff was done intentionally, in a malicious, oppressive
9 manner, entitling Plaintiff to punitive damages. Plaintiff has incurred and continues to incur legal
10 expenses and attorneys' fees in sums according to proof.

11 **SECOND CAUSE OF ACTION**

12 **DISCRIMINATION ON BASES OF RACE, NATIONAL ORIGIN, AND ANCESTRY**

13 **(Government Code §§ 12900-12996)**

14 **(By Plaintiff as against Defendant AvalonBay and Does 1 through 25)**

15 30. Plaintiff incorporates by this reference the allegations contained in the preceding
16 paragraphs above as if fully set forth herein.

17 31. At all times herein mentioned, FEHA was in full force and effect and was binding on
18 Defendant AvalonBay. These statutes require Defendant to refrain from discriminating against any
19 employee on the basis of his or her race, national origin, or ancestry. Within the time provided by law,
20 Plaintiff filed a complaint with the DFEH, in full compliance with administrative requirements and
21 received a right-to-sue letter. Copies of the right-to-sue letters are attached and incorporated by
22 reference as Exhibit "A".

23 32. During Plaintiff's employment with AvalonBay, Defendant, through its supervisors,
24 managers, and directors, engaged in intentional actions that resulted in Plaintiff being treated less
25 favorably because of her race, national origin, and ancestry. Specifically, Defendant maintained a
26 systematic and continuous policy and goal of failing to promote employees of Plaintiff's race, national
27 origin, and/or ancestry.

1 33. Defendant's willful, knowing, and intentional misconduct has been a substantial factor
2 in causing Plaintiff to sustain and continuing to sustain substantial losses of earnings and other
3 employment benefits.

4 34. Defendant's willful, knowing, and intentional misconduct has been a substantial factor
5 in causing Plaintiff to suffer and continuing to suffer humiliation, emotional distress, and mental and
6 physical pain and anguish, all to her damage in a sum according to proof at trial.

7 35. Defendant's discrimination was done intentionally, in a malicious, oppressive manner,
8 entitling Plaintiff to punitive damages.

9 36. Plaintiff has incurred and continues to incur legal expenses and attorneys' fees in sums
10 according to proof.

THIRD CAUSE OF ACTION

FAILURE TO PREVENT RETALIATION

(Gov't Code § 12940(k))

(By Plaintiff as against AvalonBay and Does 1 through 25)

15 37. Plaintiff incorporates by this reference the allegations contained in the preceding
16 paragraphs above as if fully set forth herein.

17 38. This action is brought pursuant to the California Fair Employment and Practices,
18 section 12940(k) of the Government Code and the corresponding regulations of the California Fair
19 Employment and Housing Commission, which prohibit an employer from failing to take all reasonable
20 steps necessary to prevent retaliation. Within the time provided by law, Plaintiff filed a complaint
21 with the DFEH, in full compliance with administrative requirements and received a right-to-sue letter.
22 Copies of the right-to-sue letters are attached and incorporated by reference as Exhibit "A".

23 39. At all times in this complaint, Defendant AvalonBay regularly employed at least five
24 employees bringing the Defendant employer within the provisions of section 12940 et seq. of the
25 Government Code prohibiting employers or their agents from failing to take all reasonable steps
26 necessary to prevent harassment.

27 40. AvalonBay failed to take all reasonable steps necessary to prevent retaliation in that the
28 employer failed to comply with Department of Fair Employment and Housing laws and regulations,

1 failed to offer training to prevent retaliation, failed to maintain an effective complaint procedure, failed
2 to adequately educate managers about retaliation and failed to educate managers regarding proper
3 responses to complaints. AvalonBay also failed to take all reasonable steps to prevent retaliation by
4 not taking adequate remedial action after becoming aware of the ongoing retaliation described above.

5 41. As a direct and proximate result of AvalonBay's unlawful conduct as alleged in this
6 complaint, Plaintiff has suffered extreme and severe anguish, humiliation, anger, tension, anxiety,
7 depression, lowered self-esteem, sleeplessness and emotional distress.

8 42. As a further direct and proximate result of the unlawful conduct, Plaintiff has suffered
9 and continues to suffer loss of income, loss of earning capacity, loss of job opportunity and other
10 losses.

11 43. Because AvalonBay failed to prevent harassment in violation of the Fair Employment
12 and Housing Act, Plaintiff is entitled to recover attorneys' fees and costs in this action pursuant to
13 California Government Code section 12965(b).

14 44. Because the acts taken toward Plaintiff were carried out by AvalonBay acting in a
15 deliberate, cold, callous, malicious, oppressive, and intentional manner in order to injure and damage
16 Plaintiff, Plaintiff requests an assessment of punitive damages against AvalonBay in an amount
17 appropriate to punish and make an example of AvalonBay.

18 **FOURTH CAUSE OF ACTION**

19 **DISABILITY DISCRIMINATION**

20 **(By Plaintiff as Against All Defendants and Does 1 through 25)**

21 45. Plaintiff incorporates by this reference the allegations contained in the preceding
22 paragraphs above as if fully set forth herein.

23 46. At all times herein mentioned, FEHA was in full force and effect and was binding on
24 Defendant AvalonBay. These statutes require defendant to refrain from discriminating against any
25 employee on the basis of their disability. Within the time provided by law, Plaintiff filed a complaint
26 with the DFEH, in full compliance with administrative requirements and received a right-to-sue letter.
27 Copies of the right-to-sue letters are attached and incorporated by reference as Exhibit "A".

28

1 47. Plaintiff suffered from serious medical conditions (severe back pain, neck pain, and
2 burning sensations in her feet making it difficult to walk) which Defendants knew about or should
3 have known about. Plaintiff was able to form her essential job duties with reasonable accommodation.
4 Plaintiff requested a reasonable accommodation from Defendants for her condition.

5 48. Only three days after requesting her reasonable accommodation, Defendants began
6 systematically discriminating against Plaintiff as described above. Plaintiff believes and alleges that
7 her medical issues were improper motivating factors for Defendants' sudden change in her treatment.

8 49. Defendants' willful, knowing, and intentional misconduct has been a substantial factor
9 in causing Plaintiff to sustain and continuing to sustain substantial losses of earnings and other
10 employment benefits.

11 50. Defendants' willful, knowing, and intentional misconduct has been a substantial factor
12 in causing Plaintiff to suffer and continuing to suffer humiliation, emotional distress, and mental and
13 physical pain and anguish, all to her damage in a sum according to proof at trial.

14 51. Plaintiff has incurred and continues to incur legal expenses and attorneys' fees in sums
15 according to proof.

PRAYER FOR RELIEF

Wherefore, Plaintiff Dana Concepcion prays for judgment against Defendants as follows:

1. For general and special damages according to proof;
 2. For exemplary/punitive damages according to proof;
 3. For pre-judgment and post-judgment interest on all damages awarded;
 4. For reasonable attorneys' fees as allowed by statute;
 5. For costs of suit incurred; and
 6. For any and all such other and further relief that this Court may deem just and proper.

Dated: June 13, 2012

NEWPORT TRIAL GROUP
A Professional Corporation
David W. Reid
Steven R. Telles

By:

~~David W. Reid~~
Attorneys for Plaintiff

1 **DEMAND FOR JURY TRIAL**

2 Plaintiff demands a trial by jury on all issues so triable.

3 Dated: June 13, 2012

4 NEWPORT TRIAL GROUP
5 A Professional Corporation
6 David W. Reid
7 Steven R. Telles

8 By: _____
9 David W. Reid
10 Atorneys for Plaintiff

EXHIBIT A

*** EMPLOYMENT ***

COMPLAINT OF DISCRIMINATION UNDER
THE PROVISIONS OF THE CALIFORNIA
FAIR EMPLOYMENT AND HOUSING ACT

DFEH # E201112R9482-00

DFEH USE ONLY

CALIFORNIA DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING

YOUR NAME (indicate Mr. or Ms.)

CONCEPCION, DANA

TELEPHONE NUMBER (INCLUDE AREA CODE)

(818)919-1110

ADDRESS

311 N. ROBERTSON BLVD., #230

CITY/STATE/ZIP

BEVERLY HILLS, CA 90211

COUNTY

LOS ANGELES

COUNTY CODE

037

NAMED IS THE EMPLOYER, PERSON, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, OR STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME:

NAME

AVALONBAY COMMUNITIES, INC.

TELEPHONE NUMBER (Include Area Code)

(818)945-8250

ADDRESS

1350 S. SAN FERNANDO BLVD.

CITY/STATE/ZIP

BURBANK, CA 91502

COUNTY

LOS ANGELES

COUNTY CODE

037

NO. OF EMPLOYEES/MEMBERS (if known)

DATE MOST RECENT OR CONTINUING DISCRIMINATION
TOOK PLACE (month,day, and year)

RESPONDENT CODE

150+

11/08/2011

00

THE PARTICULARS ARE:

I allege that on about or before
11/08/2011, the following
conduct occurred:

- | | | |
|--|---|--|
| <input type="checkbox"/> termination | <input type="checkbox"/> denial of employment | <input type="checkbox"/> denial of family or medical leave |
| <input type="checkbox"/> laid off | <input type="checkbox"/> denial of promotion | <input type="checkbox"/> denial of pregnancy leave |
| <input type="checkbox"/> demotion | <input type="checkbox"/> denial of transfer | <input type="checkbox"/> denial of equal pay |
| <input checked="" type="checkbox"/> harassment | <input type="checkbox"/> denial of accommodation | <input type="checkbox"/> denial of right to wear pants |
| <input type="checkbox"/> genetic characteristics testing | <input type="checkbox"/> failure to prevent discrimination or retaliation | <input type="checkbox"/> denial of pregnancy accommodation |
| <input type="checkbox"/> constructive discharge (forced to quit) | <input type="checkbox"/> retaliation | <input type="checkbox"/> other (specify) _____ |
| <input type="checkbox"/> impermissible non-job-related inquiry | | |

by AVALONBAY COMMUNITIES, INC.

Name of Person

Job Title (supervisor/manager/personnel director/etc.)

because of :

<input type="checkbox"/> sex	<input type="checkbox"/> national origin/ancestry
<input type="checkbox"/> age	<input type="checkbox"/> marital status
<input type="checkbox"/> religion	<input type="checkbox"/> sexual orientation
<input checked="" type="checkbox"/> race/color	<input type="checkbox"/> association

 disability (physical or mental) retaliation for engaging in protected medical condition (cancer or generic characteristic other (specify) _____ leave or accommodationState of what you
believe to be the
reason(s) for
discrimination

I CONSISTENTLY OUTPERFORMED THE SALES QUOTAS SET FOR ME AND RECEIVED RECOGNITION FOR MY ACCOMPLISHMENTS. I WAS DISCRIMINATED AND RETALIATED AGAINST AFTER I REQUESTED A REASONABLE ACCOMMODATION FOR MY SERIOUS MEDICAL CONDITION. I WAS ALSO HARASSED, DISCRIMINATED AGAINST, AND RETALIATED AGAINST FOR SPEAKING OUT REGARDING WAGE AND HOUR VIOLATIONS. ADDITIONALLY, I WAS DISCRIMINATED AGAINST AND PASSED OVER FOR PROMOTION AND ADVANCEMENT IN THE COMPANY BASED UPON MY RACE.

I wish to pursue this matter in court. I hereby request that the Department of Fair Employment and Housing provide a right-to-sue. I understand that if I want a federal notice of right-to-sue, I must visit the U.S. Equal Employment Opportunity Commission (EEOC) to file a complaint within 30 days of receipt of the DFEH "Notice of Case Closure," or within 300 days of the alleged discriminatory act, whichever is earlier.

I have not been coerced into making this request, nor do I make it based on fear of retaliation if I do not do so. I understand it is the Department of Fair Employment and Housing's policy to not process or reopen a complaint once the complaint has been closed on the basis of "Complainant Elected Court Action."

By submitting this complaint I am declaring under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge except as to matters stated on my information and belief, and as to those matters I believe it to be true.

Dated 05/30/2012

At Beverly Hills

DATE FILED: 05/30/2012

DFEH-300-03o (02/08)
DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING

STATE OF CALIFORNIA



STATE OF CALIFORNIA - STATE AND CONSUMER SERVICES AGENCY

EDMUND G. BROWN, JR., Governor

DEPARTMENT OF FAIR EMPLOYMENT & HOUSING
1055 WEST 7TH STREET, SUITE 1400, LOS ANGELES, CA 90017
(213) 439-6770
www.dfeh.ca.gov

Phyllis W. Cheng, Director

May 30, 2012

RE: E201112R9482-00
CONCEPCION/AVALONBAY COMMUNITIES, INC.

NOTICE TO COMPLAINANT'S ATTORNEY

Enclosed is a copy of your client's complaint of discrimination filed with the Department of Fair Employment and Housing (DFEH) pursuant to the California Fair Employment and Housing Act, Government Code section 12900 et seq. Also enclosed is a copy of your client's Notice of Case Closure, which constitutes your client's right-to-sue notice. Pursuant to Government Code section 12962, DFEH will not serve these documents on the employer.

Please refer to the enclosed Notice of Case Closure for information regarding filing a private lawsuit in the State of California.

Sincerely,

Tina Walker
District Administrator

Enclosure: Complaint of Discrimination
Notice of Case Closure

DFEH-200-06 (01/08)

EXHIBIT A PAGE 34



STATE OF CALIFORNIA - STATE AND CONSUMER SERVICES AGENCY

EDMUND G. BROWN, JR., Governor

DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

1055 WEST 7TH STREET, SUITE 1400, LOS ANGELES, CA 90017
(213) 439-6770
www.dfeh.ca.gov

Phyllis W. Cheng, Director

May 30, 2012

CONCEPCION, DANA
311 N. ROBERTSON BLVD., #230
BEVERLY HILLS, CA 90211

RE: E201112R9482-00
CONCEPCION/AVALONBAY COMMUNITIES, INC.

Dear CONCEPCION, DANA:

NOTICE OF CASE CLOSURE

This letter informs that the above-referenced complaint that was filed with the Department of Fair Employment and Housing (DFEH) has been closed effective May 30, 2012 because an immediate right-to-sue notice was requested. DFEH will take no further action on the complaint.

This letter is also the Right-To-Sue Notice. According to Government Code section 12965, subdivision (b), a civil action may be brought under the provisions of the Fair Employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. The civil action must be filed within one year from the date of this letter.

If a federal notice of Right-To-Sue is wanted, the U.S. Equal Employment Opportunity Commission (EEOC) must be visited to file a complaint within 30 days of receipt of this DFEH *Notice of Case Closure* or within 300 days of the alleged discriminatory act, whichever is earlier.

Notice of Case Closure
Page Two

DFEH does not retain case files beyond three years after a complaint is filed, unless the case is still open at the end of the three-year period.

Sincerely,



Tina Walker
District Administrator

cc: Case File

VERONICA ROBERTAZZI
HUMAN RESOURCES MANAGER
AVALONBAY COMMUNITIES, INC.
4440 VON KARMEN AVENUE, SUITE 300
NEWPORT BEACH, CA 92660

DFEH-200-43 (06/06)

EXHIBIT A PAGE 36

*** EMPLOYMENT ***

COMPLAINT OF DISCRIMINATION UNDER
THE PROVISIONS OF THE CALIFORNIA
FAIR EMPLOYMENT AND HOUSING ACT

DFEH # E201112R9482-01

DFEH USE ONLY

CALIFORNIA DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING

YOUR NAME (indicate Mr. or Ms.)

CONCEPCION, DANA

TELEPHONE NUMBER (INCLUDE AREA CODE)

(818)919-1110

ADDRESS

311 N. ROBERTSON BLVD., #230

CITY/STATE/ZIP

BEVERLY HILLS, CA, 90211

COUNTY

LOS ANGELES

COUNTY CODE

037

NAMED IS THE EMPLOYER, PERSON, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, OR STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME:

NAME

CARAWAY, RANDALL

TELEPHONE NUMBER (Include Area Code)

(818)945-8250

ADDRESS

1350 S. SAN FERNANDO BLVD

CITY/STATE/ZIP

BURBANK, CA 91502

COUNTY

COUNTY CODE

NO. OF EMPLOYEES/MEMBERS (if known)

DATE MOST RECENT OR CONTINUING DISCRIMINATION
TOOK PLACE (month, day, and year).

RESPONDENT CODE

150+

11/08/2011

01

THE PARTICULARS ARE:

I allege that on about or before
11/08/2011, the following
conduct occurred:

- | | | |
|--|---|--|
| <input type="checkbox"/> termination | <input type="checkbox"/> denial of employment | <input type="checkbox"/> denial of family or medical leave |
| <input type="checkbox"/> laid off | <input type="checkbox"/> denial of promotion | <input type="checkbox"/> denial of pregnancy leave |
| <input type="checkbox"/> demotion | <input type="checkbox"/> denial of transfer | <input type="checkbox"/> denial of equal pay |
| <input checked="" type="checkbox"/> harassment | <input type="checkbox"/> denial of accommodation | <input type="checkbox"/> denial of right to wear pants |
| <input type="checkbox"/> genetic characteristics testing | <input type="checkbox"/> failure to prevent discrimination or retaliation | <input type="checkbox"/> denial of pregnancy accommodation |
| <input type="checkbox"/> constructive discharge (forced to quit) | <input type="checkbox"/> retaliation | |
| <input type="checkbox"/> Impermissible non-job-related inquiry | <input type="checkbox"/> other (specify) _____ | |

by CARAWAY, RANDALL

SENIOR PORTFOLIO MANAGER

Name of Person

Job Title (supervisor/manager/personnel director/etc.)

because of :

- | | | | |
|--|---|---|--|
| <input type="checkbox"/> sex | <input type="checkbox"/> national origin/ancestry | <input checked="" type="checkbox"/> disability (physical or mental) | <input type="checkbox"/> retaliation for engaging in protected activity or requesting a protected leave or accommodation |
| <input type="checkbox"/> age | <input type="checkbox"/> marital status | <input type="checkbox"/> medical condition (cancer or generic characteristic) | |
| <input type="checkbox"/> religion | <input type="checkbox"/> sexual orientation | <input type="checkbox"/> other (specify) _____ | |
| <input checked="" type="checkbox"/> race/color | <input type="checkbox"/> association | | |

State of what you
believe to be the
reason(s) for
discrimination

I CONSISTENTLY OUTPERFORMED THE SALES QUOTAS SET FOR ME AND RECEIVED RECOGNITION FOR MY ACCOMPLISHMENTS. I WAS DISCRIMINATED AND RETALIATED AGAINST AFTER I REQUESTED A REASONABLE ACCOMMODATION FOR MY SERIOUS MEDICAL CONDITION. I WAS ALSO HARASSED, DISCRIMINATED AGAINST, AND RETALIATED AGAINST FOR SPEAKING OUT REGARDING WAGE AND HOUR VIOLATIONS. ADDITIONALLY, I WAS DISCRIMINATED AGAINST AND PASSED OVER FOR PROMOTION AND ADVANCEMENT IN THE COMPANY BASED UPON MY RACE.

I wish to pursue this matter in court. I hereby request that the Department of Fair Employment and Housing provide a right-to-sue. I understand that if I want a federal notice of right-to-sue, I must visit the U.S. Equal Employment Opportunity Commission (EEOC) to file a complaint within 30 days of receipt of the DFEH "Notice of Case Closure," or within 300 days of the alleged discriminatory act, whichever is earlier.

I have not been coerced into making this request, nor do I make it based on fear of retaliation if I do not do so. I understand it is the Department of Fair Employment and Housing's policy to not process or reopen a complaint once the complaint has been closed on the basis of "Complainant Elected Court Action."

By submitting this complaint I am declaring under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge except as to matters stated on my information and belief, and as to those matters I believe it to be true.

Dated 05/30/2012

At Beverly Hills

DATE FILED: 05/30/2012

DFEH-300-03o (02/08)
DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING

STATE OF CALIFORNIA

EXHIBIT A PAGE 37



STATE OF CALIFORNIA - STATE AND CONSUMER SERVICES AGENCY

EDMUND G. BROWN, JR., Governor

DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

1055 WEST 7TH STREET, SUITE 1400, LOS ANGELES, CA 90017
(213) 439-6770

www.dfeh.ca.gov

Phyllis W. Chong, Director

May 30, 2012

RE: E201112R9482-01

CONCEPCION/CARAWAY, RANDALL, AS AN INDIVIDUAL

NOTICE TO COMPLAINANT'S ATTORNEY

Enclosed is a copy of your client's complaint of discrimination filed with the Department of Fair Employment and Housing (DFEH) pursuant to the California Fair Employment and Housing Act, Government Code section 12900 et seq. Also enclosed is a copy of your client's Notice of Case Closure, which constitutes your client's right-to-sue notice. Pursuant to Government Code section 12962, DFEH will not serve these documents on the employer.

Please refer to the enclosed Notice of Case Closure for information regarding filing a private lawsuit in the State of California.

Sincerely,

A handwritten signature in black ink that reads "Tina Walker".

Tina Walker
District Administrator

Enclosure: Complaint of Discrimination
Notice of Case Closure

DFEH-200-06 (01/08)



STATE OF CALIFORNIA - STATE AND CONSUMER SERVICES AGENCY

EDMUND G. BROWN, JR., Governor

DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

1055 WEST 7TH STREET, SUITE 1400, LOS ANGELES, CA 90017

(213) 439-6770

www.dfeh.ca.gov

Phyllis W. Cheng, Director

May 30, 2012

CONCEPCION, DANA
311 N. ROBERTSON BLVD., #230
BEVERLY HILLS, CA, 90211

RE: E201112R9482-01
CONCEPCION/CARAWAY, RANDALL AS AN INDIVIDUAL

Dear CONCEPCION, DANA:

NOTICE OF CASE CLOSURE

This letter informs that the above-referenced complaint that was filed with the Department of Fair Employment and Housing (DFEH) has been closed effective May 30, 2012 because an immediate right-to-sue notice was requested. DFEH will take no further action on the complaint.

This letter is also the Right-To-Sue Notice. According to Government Code section 12965, subdivision (b), a civil action may be brought under the provisions of the Fair Employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. The civil action must be filed within one year from the date of this letter.

If a federal notice of Right-To-Sue is wanted, the U.S. Equal Employment Opportunity Commission (EEOC) must be visited to file a complaint within 30 days of receipt of this DFEH *Notice of Case Closure* or within 300 days of the alleged discriminatory act, whichever is earlier.

Notice of Case Closure
Page Two

DFEH does not retain case files beyond three years after a complaint is filed, unless the case is still open at the end of the three-year period.

Sincerely,



Tina Walker
District Administrator

cc: Case File

VERONICA HR
HUMAN RESOURCES MANAGER
AVALONBAY COMMUNITIES, INC.
4440 VON KARMEN AVENUE, SUITE 300
NEWPORT BEACH, CA 92660

DFEH-200-43 (06/06)

EXHIBIT A PAGE 40

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

ALTERNATIVE DISPUTE RESOLUTION INFORMATION PACKAGE

[CRC 3.221 Information about Alternative Dispute Resolution]

The plaintiff shall serve a copy of this Information Package on each defendant along with the complaint (Civil only).

What Is ADR:

Alternative Dispute Resolution (ADR) is the term used to describe all the other options available for settling a dispute which once had to be settled in court. ADR processes, such as arbitration, mediation, neutral evaluation (NE), and settlement conferences, are less formal than a court process and provide opportunities for parties to reach an agreement using a problem-solving approach.

There are many different kinds of ADR. All of them utilize a "neutral," an impartial person, to decide the case or help the parties reach an agreement.

Mediation:

In mediation, a neutral person called a "mediator" helps the parties try to reach a mutually acceptable resolution of the dispute. The mediator does not decide the dispute but helps the parties communicate so they can try to settle the dispute themselves. Mediation leaves control of the outcome with the parties.

Cases for Which Mediation May Be Appropriate

Mediation may be particularly useful when parties have a dispute between or among family members, neighbors, or business partners. Mediation is also effective when emotions are getting in the way of resolution. An effective mediator can hear the parties out and help them communicate with each other in an effective and nondestructive manner.

Cases for Which Mediation May Not Be Appropriate

Mediation may not be effective if one of the parties is unwilling to cooperate or compromise. Mediation also may not be effective if one of the parties has a significant advantage in power over the other. Therefore, it may not be a good choice if the parties have a history of abuse or victimization.

Arbitration:

In arbitration, a neutral person called an "arbitrator" hears arguments and evidence from each side and then decides the outcome of the dispute. Arbitration is less formal than a trial, and the rules of evidence are often relaxed. Arbitration may be either "binding" or "nonbinding." *Binding arbitration* means that the parties waive their right to a trial and agree to accept the arbitrator's decision as final. *Nonbinding arbitration* means that the parties are free to request a trial if they do not accept the arbitrator's decision.

Cases for Which Arbitration May Be Appropriate

Arbitration is best for cases where the parties want another person to decide the outcome of their dispute for them but would like to avoid the formality, time, and expense of a trial. It may also be appropriate for complex matters where the parties want a decision-maker who has training or experience in the subject matter of the dispute.

Cases for Which Arbitration May Not Be Appropriate

If parties want to retain control over how their dispute is resolved, arbitration, particularly binding arbitration, is not appropriate. In binding arbitration, the parties generally cannot appeal the arbitrator's award, even if it is not supported by the evidence or the law. Even in nonbinding arbitration, if a party requests a trial and does not receive a more favorable result at trial than in arbitration, there may be penalties.

Neutral Evaluation:

In neutral evaluation, each party gets a chance to present the case to a neutral person called an "evaluator." The evaluator then gives an opinion on the strengths and weaknesses of each party's evidence and arguments and about how the dispute could be resolved. The evaluator is often an expert in the subject matter of the dispute. Although the evaluator's opinion is not binding, the parties typically use it as a basis for trying to negotiate a resolution of the dispute.

Cases for Which Neutral Evaluation May Be Appropriate

Neutral evaluation may be most appropriate in cases in which there are technical issues that require special expertise to resolve or the only significant issue in the case is the amount of damages.

Cases for Which Neutral Evaluation May Not Be Appropriate

Neutral evaluation may not be appropriate when there are significant personal or emotional barriers to resolving the dispute.

Settlement Conferences:

Settlement conferences may be either mandatory or voluntary. In both types of settlement conferences, the parties and their attorneys meet with a judge or a neutral person called a "settlement officer" to discuss possible settlement of their dispute. The judge or settlement officer does not make a decision in the case but assists the parties in evaluating the strengths and weaknesses of the case and in negotiating a settlement. Settlement conferences are appropriate in any case where settlement is an option. Mandatory settlement conferences are often held close to the date a case is set for trial.

LOS ANGELES SUPERIOR COURT ADR PROGRAMSCIVIL:

- Civil Action Mediation (Governed by Code of Civil Procedure (CCP) sections 1775-1775.15, California Rules of Court, rules 3.850-3.868 and 3.870-3.878, Evidence Code sections 1115-1128, and Los Angeles Superior Court Rules, chapter 12.)
- Retired Judge Settlement Conference
- Neutral Evaluation (Governed by Los Angeles Superior Court Rules, chapter 12.)
- Judicial Arbitration (Governed by Code of Civil Procedure sections 1141.10-1141.31, California Rules of Court, rules 3.810-3.830, and Los Angeles Superior Court Rules, chapter 12.)
- Eminent Domain Mediation (Governed by Code of Civil Procedure section 1250.420.)
- Civil Harassment Mediation
- Small Claims Mediation

FAMILY LAW (non-custody):

- Mediation
- Forensic Certified Public Accountant (CPA) Settlement Conference
- Settlement Conference
- Nonbinding Arbitration (Governed by Family Code section 2554.)

PROBATE:

- Mediation
- Settlement Conference

NEUTRAL SELECTION

Parties may select a mediator, neutral evaluator, or arbitrator from the Court Party Pay Panel or may hire someone privately, at their discretion. If the parties utilize the Pro Bono Mediation or Arbitration Panel, the parties will be assigned on a random basis the name of one neutral who meets the case criteria entered on the court's website.

COURT ADR PANELS

- Party Pay Panel** The Party Pay Panel consists of mediators, neutral evaluators, and arbitrators who have achieved a specified level of experience in court-connected cases. The parties (collectively) may be charged \$150.00 per hour for the first three hours of hearing time. Thereafter, the parties may be charged for additional hearing time on an hourly basis at rates established by the neutral if the parties consent in writing.
- Pro Bono Panel** The Pro Bono Panel consists of trained mediators, neutral evaluators, and arbitrators who have not yet gained the experience to qualify for the Party Pay Panel, as well as experienced neutrals who make themselves available pro bono as a way of supporting the judicial system. It is the policy of the Court that all pro bono volunteer mediators, neutral evaluators, and arbitrators provide three hours hearing time per case. Thereafter, the parties may be charged for additional hearing time on an hourly basis at rates established by the neutral if the parties consent in writing.
- Private Neutral** The market rate for private neutrals can range from \$300-\$1,000 per hour.

ADR ASSISTANCE

For assistance regarding ADR, please contact the ADR clerk at the courthouse in which your case was filed.

COURTHOUSE	ADDRESS	ROOM #	CITY	PHONE
Antonovich	42011 4th St. West	None	Lancaster, CA 93534	(661)974-7275 (661)974-7060
Chatsworth	9425 Penfield Ave.	1200	Chatsworth, CA 91311	(818)576-8565 (818)576-8687
Compton	200 W. Compton Blvd.	1002	Compton, CA 90220	(310)603-3072 (310)223-0337
Glendale	600 E. Broadway	273	Glendale, CA 91206	(818)500-3160 (818)548-5470
Long Beach	415 W. Ocean Blvd.	316	Long Beach, CA 90802	(562)491-6272 (562)437-3802
Norwalk	12720 Norwalk Blvd.	308	Norwalk, CA 90650	(562)807-7243 (562)462-9019
Pasadena	300 E. Walnut St.	109	Pasadena, CA 91101	(626)356-5685 (626)666-1774
Pomona	400 Civic Center Plaza	106	Pomona, CA 91766	(909)620-3183 (909)629-5283
San Pedro	505 S. Centre	209	San Pedro, CA 90731	(310)519-6151 (310)514-0314
Santa Monica	1725 Main St.	203	Santa Monica, CA 90401	(310)260-1829 (310)319-6130
Stanley Mosk	111 N. Hill St.	113	Los Angeles, CA 90012	(213)974-5425 (213)633-5115
Torrance	825 Maple Ave.	100	Torrance, CA 90503	(310)222-1701 (310)782-7326
Van Nuys	6230 Sylmar Ave.	418	Van Nuys, CA 91401	(818)374-2337 (818)902-2440

For additional information, visit the Court ADR web application at www.lasuperiorcourt.org (click on ADR).

Partially Funded by the Los Angeles County Dispute Resolution Program

NAME, ADDRESS, AND TELEPHONE NUMBER OF ATTORNEY OR PARTY WITHOUT ATTORNEY:		STATE BAR NUMBER	Reserved for Clerk's File Stamp
ATTORNEY FOR (Name): SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES		COURTHOUSE ADDRESS:	
PLAINTIFF:			
DEFENDANT:			
STIPULATION TO PARTICIPATE IN ALTERNATIVE DISPUTE RESOLUTION (ADR)			CASE NUMBER:

The undersigned parties stipulate to participate in an Alternative Dispute Resolution (ADR) process in the above-entitled action, as follows:

- Mediation
- Non-Binding Arbitration
- Binding Arbitration
- Early Neutral Evaluation
- Settlement Conference
- Other ADR Process (describe): _____

Dated: _____

Name of Stipulating Party <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Cross-defendant	Name of Party or Attorney Executing Stipulation	Signature of Party or Attorney
---	---	--------------------------------

Name of Stipulating Party <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Cross-defendant	Name of Party or Attorney Executing Stipulation	Signature of Party or Attorney
---	---	--------------------------------

Name of Stipulating Party <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Cross-defendant	Name of Party or Attorney Executing Stipulation	Signature of Party or Attorney
---	---	--------------------------------

Name of Stipulating Party <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Cross-defendant	Name of Party or Attorney Executing Stipulation	Signature of Party or Attorney
---	---	--------------------------------

Additional signature(s) on reverse

Short Title	Case Number
-------------	-------------

Name of Stipulating Party
 Plaintiff Defendant Cross-defendant

Name of Party or Attorney Executing Stipulation

Signature of Party or Attorney

Name of Stipulating Party
 Plaintiff Defendant Cross-defendant

Name of Party or Attorney Executing Stipulation

Signature of Party or Attorney

Name of Stipulating Party
 Plaintiff Defendant Cross-defendant

Name of Party or Attorney Executing Stipulation

Signature of Party or Attorney

Name of Stipulating Party
 Plaintiff Defendant Cross-defendant

Name of Party or Attorney Executing Stipulation

Signature of Party or Attorney

Name of Stipulating Party
 Plaintiff Defendant Cross-defendant

Name of Party or Attorney Executing Stipulation

Signature of Party or Attorney

Name of Stipulating Party
 Plaintiff Defendant Cross-defendant

Name of Party or Attorney Executing Stipulation

Signature of Party or Attorney

Name of Stipulating Party
 Plaintiff Defendant Cross-defendant

Name of Party or Attorney Executing Stipulation

Signature of Party or Attorney

Name of Stipulating Party
 Plaintiff Defendant Cross-defendant

Name of Party or Attorney Executing Stipulation

Signature of Party or Attorney

Name of Stipulating Party
 Plaintiff Defendant Cross-defendant

Name of Party or Attorney Executing Stipulation

Signature of Party or Attorney

Name of Stipulating Party
 Plaintiff Defendant Cross-defendant

Name of Party or Attorney Executing Stipulation

Signature of Party or Attorney

**LOS ANGELES COUNTY
DISPUTE RESOLUTION PROGRAMS ACT (DRPA) CONTRACTORS**

The following organizations provide mediation services under contract with the Los Angeles County Department of Community & Senior Services. Services are provided to parties in any civil case filed in the Los Angeles County Superior Court. Services are not provided under this program to family, probate, traffic, criminal, appellate, mental health, unlawful detainer/eviction or juvenile court cases.

Asian-Pacific American Dispute Resolution Center

(213) 250-8190

(Spanish & Asian languages capability)

California Academy of Mediation Professionals

(818) 377-7250

Center for Conflict Resolution

(818) 380-1840

Inland Valleys Justice Center

(909) 397-5780

(Spanish language capability)

Office of the Los Angeles City Attorney Dispute Resolution Program

(213) 485-8324

(Spanish language capability)

Los Angeles County Bar Association Dispute Resolution Services

toll free number 1-877-4Resolve (737-6583) or (213) 896-6533

(Spanish language capability)

Los Angeles County Department of Consumer Affairs

(213) 974-0825

(Spanish language capability)

The Loyola Law School Center for Conflict Resolution

(213) 736-1145

(Spanish language capability)

Martin Luther King Legacy Association Dispute Resolution Center

(323) 290-4132

(Spanish language capability)

City of Norwalk

(562) 929-5603

DRPA Contractors do not provide legal advice or assistance, including help with responding to summonses. Accessing these services does not negate any responsibility you have to respond to a summons or appear at any set court date. See the reverse side of this sheet for information on the mediation process and obtaining legal advice.

THIS IS A TWO-SIDED DOCUMENT.

What is the goal of mediation?	The goal is to assist the parties in reaching a mutually acceptable agreement or understanding on some or all of the issues. The parties jointly become the primary decision maker in how to resolve the issues as opposed to the traditional judge and/or jury system.
Do I need an attorney for this?	While it is recommended to have an attorney and/or receive legal advice before the mediation starts, you are not required to have representation. If you do have an attorney, they may participate in the mediation with you.
How long does it take?	Face-to-face mediations generally last one to three hours. Telephone conciliations, in which the parties do not meet face to face, vary from a few days to several weeks. Much depends on the number of parties involved and the complexities of the issues. When the mediation takes place depends on parties scheduling availability.
A Mediator helps parties...	A Mediator does not...
<ul style="list-style-type: none"> ♦ Have productive discussions ♦ Avoid or break impasses ♦ Defuse controversy ♦ Generate options that have potential for mutual gain ♦ Better understand each other's concerns and goals ♦ Focus on their interests rather than their positions 	<ul style="list-style-type: none"> ♦ Provide advice or opinions ♦ Offer legal information ♦ Make decisions for parties ♦ Represent or advocate for either side ♦ Judge or evaluate anyone or anything ♦ Conduct research ♦ "Take Sides"
What does it cost?	<p>Legal Advice/Information</p> <p>If you want to retain an attorney, a list of state certified referral services is at courtinfo.ca.gov which also has an on-line self help legal center.</p> <p>Self-Help Legal Access Centers are at the Inglewood, Palmdale, Portola, and Van Nuys courthouses. nls-la.org and lafia.org</p> <p>Court Personnel can answer non-legal questions (forms, fees, fee waivers). lasuperiorcourt.org</p> <p>Low-income individuals may qualify for help from non-profit legal organizations. Court Personnel and DRPA contractors have such listings.</p>
What is the difference between the contractors listed and the Superior Court ADR Office?	
<p>The services offered by the contractors listed may be accessed immediately. Those offered by the Superior Court ADR Office, also a DRPA contractor, may not be accessed by parties until a court appearance, or at the directive of the judge assigned to the case.</p>	
<p>Dispute Resolution Programs Act (DRPA) Grants Administration Office (213) 738-2621 (The DRP Office is not a Superior Court Office. Consult your phone directory to locate the number of the Court Office on your summons.)</p>	

THIS IS A TWO-SIDED DOCUMENT.

EXHIBIT B

ORIGINAL FILED

JUL 17 2012

LOS ANGELES
SUPERIOR COURT

1 Michael S. Kun (State Bar No. 208684)
2 William O. Stein (State Bar No. 150124)
3 Lisa M. Watanabe (State Bar No. 258182)
4 EPSTEIN BECKER & GREEN, P.C.
5 1925 Century Park East, Suite 500
6 Los Angeles, California 90067-2506
Telephone: 310.556.8861
Facsimile: 310.553.2165
mkun@ebglaw.com
wstein@ebglaw.com
lwatanabe@ebglaw.com

7 Attorneys for Defendant
AVALONBAY COMMUNITIES, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DANA CONCEPCION,

CASE NO. EC 058728

Plaintiff,

Complaint filed: June 13, 2012

VS

**DEFENDANT AVALONBAY
COMMUNITIES, INC.'S ANSWER TO
PLAINTIFF'S COMPLAINT**

AVALONBAY COMMUNITIES, INC., a corporation; RANDALL CARAWAY, an individual; and DOES 1-25, inclusive.

Defendants

TO PLAINTIFF DANA CONCEPCION AND HER ATTORNEYS OF RECORD:

Defendant AvalonBay Communities, Inc. ("Defendant") responds to the unverified Complaint ("Complaint") filed by Plaintiff Dana Concepcion ("Plaintiff") and says as follows:

GENERAL DENIAL

Pursuant to Code of Civil Procedure § 431.30, Defendant generally denies each and every allegation in the Complaint, and generally denies that Plaintiff has been injured in any of the sums mentioned in the Complaint, or any sum at all, as the result of any act, omission to act and/or delay in acting by Defendant.

27 | 111

28 | //

AFFIRMATIVE DEFENSES

Defendant submits the following affirmative defenses to the Complaint, and each and every cause of action, claim or common count alleged therein, without assuming or undertaking any burden, or burdens of proof, not otherwise assigned to it by law:

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Cause of Action)

Plaintiff's claims fail to state facts sufficient to constitute any cause of action as to
Defendant.

SECOND AFFIRMATIVE DEFENSE

(Statute of Limitations)

11 Plaintiff's claims are barred, in whole or in part, by the applicable statute of limitations,
12 including, but not limited to, Code of Civil Procedure §§ 335, 335.1, 337, 338, 340, and any
13 other relevant limitations period, including, but not limited to, Government Code §§ 12940,
14 12960 et seq., 12965.

THIRD AFFIRMATIVE DEFENSE

(Failure to Mitigate)

Plaintiff has failed and neglected to use reasonable care to minimize and mitigate her
alleged damages, if any.

FOURTH AFFIRMATIVE DEFENSE

(Consent)

21 Any recovery on the Complaint, or any cause of action or purported cause of action
22 alleged therein, is barred on the grounds that Plaintiff consented to the conduct challenged
23 therein.

FIFTH AFFIRMATIVE DEFENSE

(Business Judgment)

Defendant's actions with respect to Plaintiff were a legitimate exercise of Defendant's business judgment which Plaintiff cannot invade.

28 | //

SIXTH AFFIRMATIVE DEFENSE

(Estoppel)

By reason of her own conduct, actions or inaction, Plaintiff is estopped from asserting the claims set forth in the Complaint and therefore is barred, in whole or in part, from the relief sought therein.

SEVENTH AFFIRMATIVE DEFENSE

(Judicial Estoppel)

The Complaint, each purported cause of action alleged therein, and the elements of relief sought therein are barred, in whole or in part, by judicial estoppel.

EIGHTH AFFIRMATIVE DEFENSE

(Laches)

12 Any recovery on Plaintiff's Complaint, and each purported cause of action alleged
13 therein, is barred by the doctrine of laches.

NINTH AFFIRMATIVE DEFENSE

(Manager's Privilege)

Some or all of Plaintiff's claims are barred by the manager's privilege.

TENTH AFFIRMATIVE DEFENSE

(Unclean Hands)

Some or all of Plaintiff's claims are barred by the doctrine of unclean hands.

ELEVENTH AFFIRMATIVE DEFENSE

(Waiver)

22 The Complaint and each purported cause of action alleged therein are barred, in whole or
23 in part, by the waiver doctrine.

TWELFTH AFFIRMATIVE DEFENSE

(Lack of Actual or Constructive Knowledge)

Defendant lacked actual or constructive knowledge of the conduct alleged in the
Complaint or of any alleged wrongdoing by any other defendant or other person.

28 | //

THIRTEENTH AFFIRMATIVE DEFENSE

(Plaintiff as Cause)

Plaintiff is barred from claiming any injuries or damages because such injuries and damages were the sole, direct and proximate result of Plaintiff's conduct.

FOURTEENTH AFFIRMATIVE DEFENSE

(Failure to Exhaust)

Some or all of Plaintiff's claims are barred because she failed to exhaust her administrative remedies under the Fair Employment and Housing Act, Government Code § 12900, *et seq.*, which is a jurisdictional requirement to proceed with these claims.

FIFTEENTH AFFIRMATIVE DEFENSE

(Good Faith)

12 Some or all of Plaintiff's claims are barred because at all times Defendant was acting in
13 good faith.

SIXTEENTH AFFIRMATIVE DEFENSE

(Proximate Cause)

16 Any acts or omissions to act by Defendant were not the proximate cause of any injury
17 suffered by Plaintiff.

SEVENTEENTH AFFIRMATIVE DEFENSE

(Offset)

20 Any recovery on Plaintiff's Complaint, or any purported cause of action alleged therein,
21 is barred in whole or in part because Defendant is entitled to an offset for any monies Plaintiff
22 received from any source consistent with the common law doctrine of offset and the doctrine
23 prohibiting double recovery set forth under Witt v. Jackson, 57 Cal.2d 57 (1961) and its progeny.

EIGHTEENTH AFFIRMATIVE DEFENSE

(After-Acquired Evidence)

26 The Complaint is limited or subject to an absolute bar as to recoverable damages based
27 on after-acquired evidence that Defendant has presently and/or may acquire during the course of
28 this litigation.

NINETEENTH AFFIRMATIVE DEFENSE

(Workers' Compensation)

Plaintiff is barred from seeking any damages for purported physical, mental or emotional injuries allegedly suffered as a result of her employment in that the sole and exclusive remedy in this respect is and was governed by the California Workers' Compensation Act and Labor Code §§ 3200 through 4627.

TWENTIETH AFFIRMATIVE DEFENSE

(Privileges)

9 Defendant is entitled to all privileges available to it to the extent provided by the Civil
10 Code or elsewhere.

TWENTY-FIRST AFFIRMATIVE DEFENSE

(Legitimate Business Reasons)

13 Defendant's actions were for legitimate business reasons made in good faith and were not
14 based upon a violation of public policy or other factors protected by law.

TWENTY-SECOND AFFIRMATIVE DEFENSE

(Motivating Factor)

17 Any recovery on Plaintiff's Complaint, or any cause of action alleged therein, is barred in
18 that the alleged discrimination and harassment were not motivating factors in any actions or
19 employment decisions made concerning Plaintiff.

TWENTY-THIRD AFFIRMATIVE DEFENSE

(No Notice)

Plaintiff's discrimination claims are barred and/or any recovery is barred or limited because Defendant did not receive notice from Plaintiff that any employee or managing agent of Defendant allegedly had engaged in any of the alleged conduct directed against or towards Plaintiff based upon her race, national origin, ancestry or alleged disability and Plaintiff unreasonably failed to complain of any unlawful conduct and/or take advantage of the preventative or corrective opportunities available and/or otherwise avoid harm.

28 | //

1 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

2 **(Policies Prohibiting Discrimination and Retaliation)**

3 Any recovery on Plaintiff's Complaint, or any purported cause of action alleged therein,
4 is barred in whole or in part because Defendant maintained policies prohibiting unlawful conduct
5 and promoted a work environment free from discrimination and retaliation.

6 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

7 **(Corrective Action)**

8 Any recovery on Plaintiff's discrimination, retaliation or failure to prevent retaliation
9 claims are barred because Defendant exercised reasonable care to prevent, investigate and
10 promptly correct any alleged behavior including, but not limited to, taking immediate and
11 appropriate corrective action reasonably calculated to end any alleged unlawful employment
12 practices.

13 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

14 **(Prompt Response)**

15 Any recovery on Plaintiff's Complaint, or any cause of action alleged therein, is barred in
16 whole or in part because Defendant acted promptly and appropriately in response to Plaintiff's
17 complaints of discrimination, if any.

18 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

19 **(Failure to Use Internal Complaint Procedures)**

20 Defendant has published adequate policies to prevent unlawful discrimination or other
21 conduct within Defendant's workplace. Further, Plaintiff experienced no tangible employment
22 loss as a result of any of the alleged acts of discrimination. Defendant's policies and procedures
23 included internal complaint procedures which would lead to prompt remedial action in the event
24 of a complaint of wrongdoing. Nevertheless, Plaintiff failed or refused to access said complaint
25 procedures. As a result, Plaintiff is foreclosed from pursuing the present action.

26 ///

27 ///

28 ///

TWENTY-EIGHTH AFFIRMATIVE DEFENSE**(Avoidable Consequences Doctrine)**

Although Defendant denies that it committed or has responsibility for any act that could support the recovery of damages in this lawsuit, if any, to the extent Plaintiff was discriminated against or subjected to any other alleged unlawful employment practice, Plaintiff is barred from recovering any damages under the avoidable consequences doctrine. Defendant took reasonable steps to prevent and correct workplace discrimination, Plaintiff unreasonably failed to utilize Defendant's preventative and corrective measures and reasonable use of Defendant's preventative and corrective measures would have prevented at least some of the harm Plaintiff allegedly suffered. Department of Health Services v. Superior Court (McGinnis), 31 Cal. 4th 1026 (2000).

TWENTY-NINTH AFFIRMATIVE DEFENSE**(Punitive Damages)**

Plaintiff's claims for punitive damages are barred because the Complaint fails to state facts sufficient to meet the requirements of Civil Code § 3294.

THIRTIETH AFFIRMATIVE DEFENSE**(Punitive Damages)**

Plaintiff's claims for punitive damages are barred by the California and United States Constitutions.

THIRTY-FIRST AFFIRMATIVE DEFENSE**(Additional Defenses)**

Defendant hereby gives notice that it intends to rely upon any other defenses that may become available or appear during the discovery proceedings in this case, and hereby reserve the right to amend its answer to assert any such defenses.

WHEREFORE, Defendant respectfully requests that:

1. Plaintiff takes nothing by this action;
2. Judgment be entered in favor of Defendant and against Plaintiff on all causes of action;

- 1 3. Defendant be awarded costs of suit and attorneys' fees herein; and
2 4. For such other and further relief as the Court deems just and proper.
3

4 DATED: July 17, 2012

EPSTEIN BECKER & GREEN, P.C.

5 By: 

6 MICHAEL S. KUN
7 WILLIAM O. STEIN
8 LISA M. WATANABE
9 Attorneys for Defendant
10 AVALONBAY COMMUNITIES, INC.

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

2 | STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

8 David W. Reid, Esq.
9 Steven R. Telles, Esq.
10 895 Dove Street, Suite 425
 Newport Beach, California 92660
 Telephone: (949) 706-6464
 Facsimile: (949) 706-6469

Attorneys for Plaintiff,
DANA CONCEPCION

- 12 5. a. **By personal service.** I personally delivered the documents on the date shown
13 below to the persons at the addresses listed above in item 4. (1) For a party
14 represented by an attorney, delivery was made to the attorney or at the attorney's
15 office by leaving the documents in an envelope or package clearly labeled to
16 identify the attorney being served with a receptionist or an individual in charge of
17 the office. (2) For a party delivery was made to the party or by leaving the
18 documents at the party's residence between the hours of eight in the morning and
19 six in the evening with some person not less than 18 years of age.

- b. By United States mail. I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses in item 4 and (specify one):

I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Los Angeles, California.

- 4 c. **By overnight Federal Express delivery.** I enclosed the documents on the date
5 shown below in an envelope or package provided by the overnight Federal
6 Express delivery carrier and addressed to the person at the addresses in item 4. I
placed the envelope or package for collection and overnight Federal Express delivery
at an office or a regularly utilized drop box of the overnight Federal Express delivery
carrier.

- d. By messenger service. I served the documents on the date shown below by placing them in an envelope or package addressed to the person on the addresses listed in item 4 and providing them to a professional messenger service for service

(A declaration by the messenger must accompany this proof of service or be contained in the Declaration of Messenger below.)

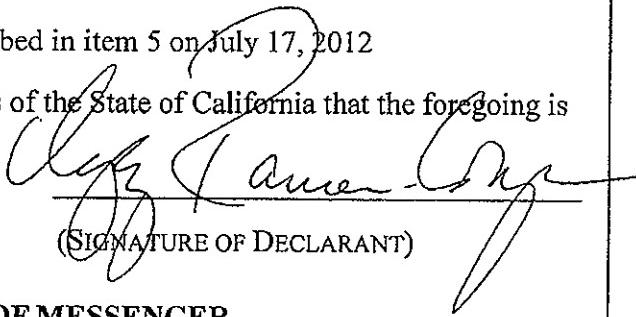
- e. **By fax transmission.** Based on an agreement of the parties to accept service by fax transmission, I faxed the documents on the date shown below to the fax numbers of the persons listed in item 4. No error was reported by the fax machine that I used. A copy of the fax transmission, which I printed out, is attached.
- f. **By e-mail or electronic transmission.** Based on an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent on the date shown below to the e-mail addresses of the persons listed in item 4. I did not receive within a reasonable time after the transmission any electronic message or other indication that the transmission was unsuccessful.

6. I served the documents by the means described in item 5 on July 17, 2012

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

7/17/12 Ingez Rameau-Compean

DATE (TYPE OR PRINT NAME)

(SIGNATURE OF DECLARANT) 

DECLARATION OF MESSENGER

- By personal service.** I personally delivered the envelope or package received from the declarant above to the persons at the addresses listed in item 4. I delivered the documents on the date shown below to the persons at the addresses listed in item 4. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents in an envelope or package, which was clearly labeled to identify the attorney being served, with a receptionist or an individual in charge of the office. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence between the hours of eight in the morning and six in the evening with some person not less than 18 years of age.

At the time of service, I was at least 18 years of age. I am not a party to the above referenced legal proceeding.

I served the envelope or package, as stated above, on (date): July 17, 2012

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DATE (TYPE OR PRINT NAME)

(SIGNATURE OF DECLARANT) 

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

1. At the time of service I was at least 18 years of age and **not a party to this legal action.**
 2. My business address is 1925 Century Park East, Suite 500, Los Angeles, CA 90067-2506.
 3. I served true and correct copies of the foregoing document described as:

NOTICE OF REMOVAL

4. I served the document described above in item 3 upon the interested parties in this action at the address listed below:

David W. Reid, Esq.
Steven R. Telles, Esq.
895 Dove Street, Suite 425
Newport Beach, California 92660
Telephone: (949) 706-6464
Facsimile: (949) 706-6469

Attorneys for Plaintiff,
DANA CONCEPCION

5. a. **By personal service.** I personally delivered the documents on the date shown below to the persons at the addresses listed above in item 4. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents in an envelope or package clearly labeled to identify the attorney being served with a receptionist or an individual in charge of the office. (2) For a party delivery was made to the party or by leaving the documents at the party's residence between the hours of eight in the morning and six in the evening with some person not less than 18 years of age.

- b. **By United States mail.** I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses in item 4 and *(specify one)*:

- (1) deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid on the date shown below, or

- (2) placed the envelope for collection and mailing on the date shown below, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I am a resident or employed in the county where the mailing occurred.
The envelope or package was placed in the mail at Los Angeles,
California.

- 1 c. **By overnight Federal Express delivery.** I enclosed the documents
2 on the date shown below in an envelope or package provided by the
3 overnight Federal Express delivery carrier and addressed to the person
4 at the addresses in item 4. I placed the envelope or package for
5 collection and overnight Federal Express delivery at an office or a
6 regularly utilized drop box of the overnight Federal Express delivery
7 carrier.
8
8 d. **By messenger service.** I served the documents on the date shown
9 below by placing them in an envelope or package addressed to the
10 person on the addresses listed in item 4 and providing them to a
11 professional messenger service for service. (A declaration by the
12 messenger must accompany this proof of service or be contained in the
13 Declaration of Messenger below.)
14
14 e. **By fax transmission.** Based on an agreement of the parties to accept
15 service by fax transmission, I faxed the documents on the date shown
16 below to the fax numbers of the persons listed in item 4. No error was
17 reported by the fax machine that I used. A copy of the fax transmission,
18 which I printed out, is attached.
19
19 f. **By e-mail or electronic transmission.** Based on an agreement of the
20 parties to accept service by e-mail or electronic transmission, I caused
21 the documents to be sent on the date shown below to the e-mail
22 addresses of the persons listed in item 4. I did not receive within a
23 reasonable time after the transmission any electronic message or other
24 indication that the transmission was unsuccessful.

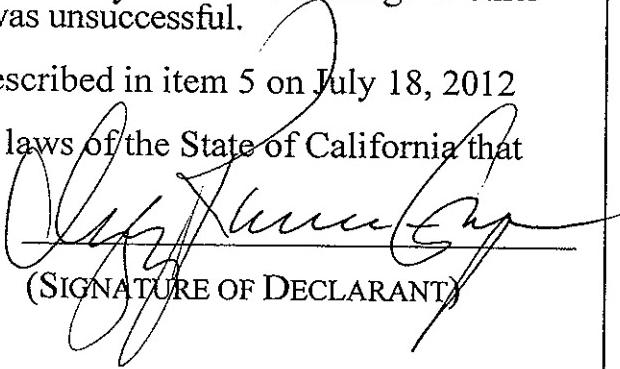
25 6. I served the documents by the means described in item 5 on July 18, 2012

26 I declare under penalty of perjury under the laws of the State of California that
27 the foregoing is true and correct.

28 7/18/12

DATE Ingez Rameau-Compean

18 (TYPE OR PRINT NAME)

19 
(SIGNATURE OF DECLARANT)

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge Michael Fitzgerald and the assigned discovery Magistrate Judge is Charles Eick.

The case number on all documents filed with the Court should read as follows:

CV12- 6203 MWF (Ex)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

=====
NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

Western Division
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

Southern Division
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

Eastern Division
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEETI (a) PLAINTIFFS (Check box if you are representing yourself)
DANA CONCEPCIONDEFENDANTS
AVALONBAY COMMUNITIES, INC.; RANDALL CARAWAY(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)
NEWPORT TRIAL GROUP
David W. Reid / Steven R. Telles
895 Dove Street, Suite 425
Newport Beach, CA 92660
Tel: (949) 706-6464 / Fax: (949) 706-6469Attorneys (If Known)
EPSTEIN BECKER & GREEN, P.C.
Michael S. Kun / William O. Stein / Lisa M. Watanabe
1925 Century Park East, Suite 500
Los Angeles, CA 90067-2506
Tel: (310) 556-8861 / Fax: (310) 553-2165

II. BASIS OF JURISDICTION (Place an X in one box only.)

- 1 U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only
(Place an X in one box for plaintiff and one for defendant.)

	PTF	DEF	PTF	DEF	
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	<input type="checkbox"/> 4	<input checked="" type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input checked="" type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input checked="" type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. ORIGIN (Place an X in one box only.)

- 1 Original 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from another district (specify): 6 Multi-District Litigation 7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT: JURY DEMAND: Yes No (Check 'Yes' only if demanded in complaint.)CLASS ACTION under F.R.C.P. 23: Yes No MONEY DEMANDED IN COMPLAINT: \$VI. CAUSE OF ACTION (Cite the U. S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)
Removed on jurisdictional diversity grounds (28 U.S.C. 1332 and 1441). Retaliation, failure to prevent retaliation, discrimination based on race, national origin, ancestry and disability.

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES	CONTRACT	TORTS	PERSONAL PROPERTY	PRISONER PETITIONS	LABOR
<input type="checkbox"/> 400 State Reapportionment	<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> PERSONAL INJURY	<input type="checkbox"/> PERSONAL PROPERTY	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus	<input type="checkbox"/> 710 Fair Labor Standards Act
<input type="checkbox"/> 410 Antitrust	<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 530 General	<input type="checkbox"/> 720 Labor/Mgmt. Relations
<input type="checkbox"/> 430 Banks and Banking	<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act
<input type="checkbox"/> 450 Commerce/ICC Rates/etc.	<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 540 Mandamus/Other	<input type="checkbox"/> 740 Railway Labor Act
<input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Fed. Employers' Liability	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 790 Other Labor Litigation
<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations	<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act
<input type="checkbox"/> 480 Consumer Credit	<input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 820 Copyrights
<input type="checkbox"/> 490 Cable/Sat TV	<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 830 Patent
<input type="checkbox"/> 810 Selective Service	<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input checked="" type="checkbox"/> 442 Employment	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 840 Trademark
<input type="checkbox"/> 850 Securities/Commodities/ Exchange	<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 851 HIA(1395f)
<input type="checkbox"/> 875 Customer Challenge 12 USC 3410	<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 362 Personal Injury-Med Malpractice	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 862 Black Lung (923)
<input type="checkbox"/> 890 Other Statutory Actions	<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 365 Personal Injury-Product Liability	<input type="checkbox"/> 445 American with Disabilities - Employment	<input type="checkbox"/> 650 Airline Regs	<input type="checkbox"/> 863 DIWC/DIWW 405(g))
<input type="checkbox"/> 891 Agricultural Act	<input type="checkbox"/> REAL PROPERTY	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 446 American with Disabilities - Other	<input type="checkbox"/> 660 Occupational Safety /Health	<input type="checkbox"/> 864 SSID Title XVI
<input type="checkbox"/> 892 Economic Stabilization Act	<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 462 Naturalization Application	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 865 RSI (405(g))
<input type="checkbox"/> 893 Environmental Matters	<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 463 Habeas Corpus-Alien Detainee			<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)
<input type="checkbox"/> 894 Energy Allocation Act	<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 465 Other Immigration Actions			<input type="checkbox"/> 871 IRS-Third Party 26 USC 7609
<input type="checkbox"/> 895 Freedom of Info. Act	<input type="checkbox"/> 240 Torts to Land				
<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice	<input type="checkbox"/> 245 Tort Product Liability				
<input type="checkbox"/> 950 Constitutionality of State Statutes	<input type="checkbox"/> 290 All Other Real Property				

CV 12-6203

FOR OFFICE USE ONLY: Case Number: _____

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? No Yes

If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? No Yes

If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply)
- A. Arise from the same or closely related transactions, happenings, or events; or
 - B. Call for determination of the same or substantially related or similar questions of law and fact; or
 - C. For other reasons would entail substantial duplication of labor if heard by different judges; or
 - D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named plaintiff resides.
 Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District: [*]	California County outside of this District; State, if other than California; or Foreign Country
LOS ANGELES	

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named defendant resides.
 Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District: [*]	California County outside of this District; State, if other than California; or Foreign Country
	VIRGINIA and MARYLAND

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH claim arose.
Note: In land condemnation cases, use the location of the tract of land involved.

County in this District: [*]	California County outside of this District; State, if other than California; or Foreign Country
LOS ANGELES	

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved.

X. SIGNATURE OF ATTORNEY (OR PRO PER):

Date July 17, 2012

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3 -1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))